

FEDERAL RESERVE SYSTEM

Ameris Bancorp  
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company

Ameris Bancorp (“Ameris”), Moultrie, Georgia, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Fidelity Southern Corporation (“FSC”) and thereby indirectly acquire FSC’s state nonmember bank subsidiary, Fidelity Bank, both of Atlanta, Georgia. Fidelity Bank would be merged into Ameris’s state nonmember bank subsidiary, Ameris Bank, Moultrie, Georgia.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 Federal Register 3445 (February 12, 2019)).<sup>4</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Ameris, with consolidated assets of approximately \$11.7 billion, is the 136<sup>th</sup> largest insured depository organization in the United States. Ameris controls approximately \$9.6 billion in consolidated deposits, which represent less than 1 percent

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<sup>1</sup> 12 U.S.C. § 1841 et seq.

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> The merger of Fidelity Bank into Ameris Bank was approved by the Federal Deposit Insurance Corporation (“FDIC”) on May 6, 2019, pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

<sup>4</sup> 12 CFR 262.3(b).

of the total amount of deposits of insured depository institutions in the United States.<sup>5</sup> Ameris controls Ameris Bank, which operates in Georgia, Florida, Alabama, and South Carolina. Ameris is the 8th largest insured depository organization in Georgia, controlling deposits of approximately \$5.3 billion, which represent 2.1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup> Ameris is the 30th largest insured depository organization in Florida, controlling deposits of approximately \$2.6 billion, which represent 0.5 percent of the total deposits of insured depository institutions in that state.

FSC, with consolidated assets of approximately \$4.8 billion, is the 234th largest insured depository organization in the United States. FSC controls approximately \$4.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FSC controls Fidelity Bank, which operates in Georgia and Florida. FSC is the 15th largest insured depository organization in Georgia, controlling deposits of approximately \$3.3 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. FSC is the 54th largest insured depository organization in Florida, controlling deposits of approximately \$0.8 billion, which represent 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Ameris would become the 104th largest insured depository organization in the United States, with consolidated assets of approximately \$16.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total consolidated deposits of approximately \$13.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In

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<sup>5</sup> National asset data are as of March 31, 2019, and national deposit data are as of December 31, 2018, unless otherwise noted.

<sup>6</sup> State deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

Georgia, Ameris would become the 6th largest insured depository organization, controlling deposits of approximately \$8.6 billion, which represent 3.4 percent of the total deposits of insured depository institutions in the state. In Florida, Ameris would become the 26th largest insured depository organization, controlling deposits of approximately \$3.5 billion, which represent 0.6 percent of total deposits of insured depository institutions in the state.

### Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.<sup>7</sup> Section 3(d) also provides that the Board (1) may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years;<sup>8</sup> (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 (“CRA”)<sup>9</sup> and the applicant’s record of compliance with applicable state community reinvestment laws;<sup>10</sup> and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions

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<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. See 12 U.S.C. § 1841(o)(4)(C).

<sup>8</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>9</sup> 12 U.S.C. § 2901 et seq.

<sup>10</sup> 12 U.S.C. § 1842(d)(3).

in the United States<sup>11</sup> or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.<sup>12</sup>

For purposes of the BHC Act, the home state of Ameris is Georgia, and Fidelity Bank is located in Florida and Georgia. Ameris is well capitalized and well managed under applicable law. Fidelity Bank has been in existence for more than five years, and Ameris Bank has a “Satisfactory” rating under the CRA.

On consummation of the proposed transaction, Ameris would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Florida does not impose a limit on the total amount of in-state deposits that a single banking organization may control. Georgia imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.<sup>13</sup> In Georgia, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

#### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize

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<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A).

<sup>12</sup> 12 U.S.C. § 1842(d)(2)(B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. § 1841(o)(4)-(7).

<sup>13</sup> Ga. Code § 7-1-628.3(a).

the business of banking in any relevant market.<sup>14</sup> The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.<sup>15</sup>

Ameris Bank and Fidelity Bank compete directly in the Atlanta Area, Georgia, banking market (“Atlanta market”); the Jacksonville Area, Florida, banking market (“Jacksonville market”); the Saint Augustine Area, Florida, banking market (“St. Augustine market”); and the Tallahassee Area, Florida, banking market (“Tallahassee market”).<sup>16</sup> The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in each market (“market deposits”) that Ameris would control;<sup>17</sup> the concentration level of market deposits and the increase in this level,

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<sup>14</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>15</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>16</sup> The Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County minus the town of Clermont; the towns of Auburn and Winder in Barrow County; and Luthersville in Meriwether County, all in Georgia. The Jacksonville market is defined as Baker, Clay, Duval, and Nassau counties, Florida; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, Florida; and the city of Folkston in Charlton County, Georgia. The St. Augustine market is defined as St. Johns County, Florida (minus the towns of Fruit Cover, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings). The Tallahassee market is defined as Gadsden, Jefferson, Leon, and Wakulla counties, Florida.

<sup>17</sup> Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); and National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift

as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>18</sup> the number of competitors that would remain in each market; and other characteristics of each market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Atlanta, Jacksonville, St. Augustine, and Tallahassee markets. On consummation of the proposal, the Jacksonville market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines; however, the change in HHI would be small and numerous competitors would remain in the market.<sup>19</sup> The Atlanta, St. Augustine, and Tallahassee markets would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the

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deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>18</sup> Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>19</sup> Ameris operates the 6th largest depository institution in the Jacksonville market, controlling approximately \$1.1 billion in deposits, which represent 2.2 percent of market deposits. FSC operates the 14th largest depository institution in the same market, controlling deposits of approximately \$318.7 million, which represent approximately 0.6 percent of market deposits. On consummation of the proposed transaction, Ameris would remain the 6th largest depository organization in the market, controlling deposits of approximately \$1.4 billion, which represent approximately 2.8 percent of market deposits. The HHI for the Jacksonville market would increase by 3 points to 2709, and 33 competitors would remain in the market.

HHI in the Atlanta market would be small, and numerous competitors would remain in the market.<sup>20</sup> The change in the HHI in the St. Augustine market would be less than 200 points, and 12 competitors would remain in the St. Augustine market.<sup>21</sup> The HHI in the Tallahassee market would remain unchanged, and 17 competitors would remain in the market.<sup>22</sup>

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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<sup>20</sup> Ameris operates the 18th largest depository institution in the Atlanta market, controlling approximately \$1.3 billion in deposits, which represent 0.8 percent of market deposits. FSC operates the 10th largest depository institution in the same market, controlling deposits of approximately \$3.2 billion, which represent approximately 1.9 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 7th largest depository organization in the market, controlling deposits of approximately \$4.5 billion, which represent approximately 2.7 percent of market deposits. The HHI for the Atlanta market would increase by 3 points to 1551, and 79 competitors would remain in the market.

<sup>21</sup> Ameris operates the 4th largest depository institution in the St. Augustine market, controlling approximately \$288.2 million in deposits, which represent 14.0 percent of market deposits. FSC operates the 6th largest depository institution in the same market, controlling deposits of approximately \$133.7 million, which represent 6.5 percent of market deposits. On consummation of the proposal, Ameris would become the largest depository institution in the market, controlling deposits of approximately \$421.9 million, which represent 20.4 percent of market deposits. The HHI for the St. Augustine market would increase by 181 points to 1455.

<sup>22</sup> Ameris operates the 13th largest depository institution in the Tallahassee market, controlling approximately \$125.0 million in deposits, which represent 1.6 percent of market deposits. FSC operates the 17th largest depository institution in the same market, controlling approximately \$11.6 million in deposits, which represent 0.2 percent of market deposits. On consummation of the proposal, Ameris would remain the 13th largest depository institution, controlling \$136.6 million in deposits, which represent 1.7 percent of market deposits. The HHI for the Tallahassee market would remain 1036.

Based on all of the facts of record, the Board determines that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta, Jacksonville, St. Augustine, or Tallahassee markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

#### Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.<sup>23</sup> In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Ameris, FSC, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the

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<sup>23</sup> 12 U.S.C. § 1842(c)(2), (5), and (6).

proposal. The proposed transaction is a bank holding company merger that is structured primarily as a stock exchange, with a subsequent merger of the subsidiary depository institutions.<sup>24</sup> The asset quality, earnings, and liquidity of both Ameris Bank and Fidelity Bank are consistent with approval, and Ameris appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Ameris, FSC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Ameris; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenter.

Ameris, FSC, and their subsidiary depository institutions are each considered to be well managed. Ameris has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. Ameris's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Ameris's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Ameris's plans for implementing the proposal. Ameris has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration

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<sup>24</sup> As part of the proposed transaction, each share of FSC's common stock would be converted into the right to receive 0.8 shares of Ameris common stock together with cash in lieu of any fractional shares. Ameris has the financial resources to effect the proposed transaction.

process for this proposal. Ameris would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to operate the combined organization in a safe and sound manner, and Ameris plans to integrate FSC's existing management and personnel in a manner that augments Ameris's management.<sup>25</sup>

Based on all of the facts of record, including Ameris's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Ameris and FSC in combatting money-laundering activities, are consistent with approval.

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>26</sup> In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities. The Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which

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<sup>25</sup> On consummation, the number of directors on Ameris's board of directors would increase by five, and five individuals currently serving on the board of directors of FSC would join the board of Ameris. Corresponding changes would be made to the board of directors of Ameris Bank. In addition, the current chairman and chief executive officer ("CEO") of FSC would become the executive chairman of Ameris and Ameris Bank, and the current president of FSC and CEO of Fidelity Bank would become the president of Ameris and the CEO of Ameris Bank.

<sup>26</sup> 12 U.S.C. § 1842(c)(2).

they operate, consistent with the institutions' safe and sound operation,<sup>27</sup> and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>28</sup>

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Ameris Bank and Fidelity Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, and the public comment received on the proposal.

*Public Comment on the Proposal*

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Ameris Bank to, and in the rate of denials for home mortgage applications from, African Americans and Hispanics as compared to whites in Atlanta, Georgia, based on 2017 data that Ameris reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").<sup>29</sup> The commenter also alleged,

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<sup>27</sup> 12 U.S.C. § 2901(b).

<sup>28</sup> 12 U.S.C. § 2903.

<sup>29</sup> 12 U.S.C. § 2801 *et seq.* This commenter made similar allegations based on 2016 HMDA data, and those allegations previously were considered by the Board in

based on 2016 and 2017 HMDA data, disparities in the number of home improvement loans Ameris Bank made to African Americans and Latinos as compared to whites in Jacksonville, Florida.<sup>30</sup>

*Businesses of the Involved Institutions and Response to the Public Comment*

Through its network of branches in Georgia, Florida, Alabama, and South Carolina, Ameris Bank offers a variety of products and services, including real estate loans, auto-secured and recreational-vehicle-secured loans, and home equity lines of credit. Ameris Bank also offers various deposit products for both businesses and consumers.

Fidelity Bank offers a variety of consumer and business loan and deposit products, as well as related wealth management services, through its branches in Georgia and Florida. Fidelity Bank's products and services include real estate loans, auto loans, home equity lines of credit, business loans, and checking and savings accounts.

In response to the commenter's allegations, Ameris asserts that approval of the proposed transaction is warranted based on Ameris Bank's CRA performance evaluation and Ameris Bank's involvement in other programs tailored to assist LMI individuals and first-time homebuyers in pursuing or maintaining homeownership.

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connection with its May 9, 2018, approval of Ameris's application to acquire Atlantic Coast Financial Corporation and its June 13, 2018, approval of Ameris's application to acquire Hamilton State Bancshares, Inc. See Ameris Bancorp, FRB Order No. 2018-12 at 11 (May 9, 2018); Ameris Bancorp, FRB Order No. 2018-14 at 8 (June 13, 2018).

<sup>30</sup> The commenter also alleged that Ameris has engaged in predatory collection of overdraft fees and expressed concern over Ameris's allegedly conflicting statements regarding the intended location of its headquarters. The allegation regarding Ameris's overdraft fee collection practices also previously was considered by the Board in its May 9, 2018, approval of Ameris's application to acquire Atlantic Coast Financial Corporation and its June 13, 2018, approval of Ameris's application to acquire Hamilton State Bancshares, Inc. See Ameris Bancorp, FRB Order No. 2018-12 at 11 (May 9, 2018); Ameris Bancorp, FRB Order No. 2018-14 at 8 (June 13, 2018). The statements about the location of Ameris's headquarters are outside of the statutory factors that the Board is authorized to consider when reviewing an application or notice under section 3 of the BHC Act. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

Ameris notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Ameris also asserts that HMDA data do not reflect the range of Ameris Bank's lending activities and efforts within the communities it serves.

With respect to the commenter's allegations about Ameris Bank's disparate home mortgage lending practices in Atlanta, Ameris argues that its distribution of mortgage loans among African Americans and Latinos in Atlanta is generally comparable to the population demographics. Ameris also asserts that it is among the top 10 percent of lenders originating mortgages to African Americans in Atlanta. In addition, with respect to the commenter's allegations about Ameris Bank's disparate home improvement lending practices in Jacksonville, Ameris asserts that Ameris Bank does not actively market home improvement loans and receives only a small number of applications in Jacksonville.

*Records of Performance under the CRA*

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of the relevant federal supervisor, which in this case is the FDIC with respect to both institutions.<sup>31</sup> In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.<sup>32</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site

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<sup>31</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 Federal Register 48,506, 48,548 (July 25, 2016).

<sup>32</sup> 12 U.S.C. § 2906.

evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Ameris Bank and Fidelity Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates the institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;<sup>33</sup> (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the

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<sup>33</sup> Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

credit needs of LMI individuals and geographies.<sup>34</sup> The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.<sup>35</sup>

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.<sup>36</sup> Consequently, the Board evaluates such data disparities in the context of other information regarding the lending record of an institution.

#### *CRA Performance of Ameris Bank*

Ameris Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 3, 2016 ("Ameris Bank

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<sup>34</sup> See 12 CFR 228.22(b).

<sup>35</sup> See 12 CFR 228.21 et seq.

<sup>36</sup> Other information relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

Evaluation”).<sup>37</sup> The bank received “High Satisfactory” ratings for the Lending Test and the Service Test and a “Low Satisfactory” rating for the Investment Test.<sup>38</sup>

Examiners found that the bank’s lending levels reflected good responsiveness to the needs of the bank’s AAs and that the bank made a majority of its loans within its AAs. Examiners determined that the bank’s borrower profile revealed good penetration among retail customers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank’s loans reflected good penetration throughout the bank’s AAs. Examiners noted that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, LMI individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that Ameris Bank made a high level of community development loans and used flexible lending practices in order to serve its AAs. With respect to the Atlanta market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected excellent penetration throughout the AA. With respect to the Jacksonville market, examiners found that lending levels reflected adequate responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA.

Examiners found that Ameris Bank had an adequate level of qualified community development investments and donations and exhibited adequate responsiveness to credit and community economic development needs. Examiners noted

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<sup>37</sup> The Ameris Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage, small business, and small farm loans from January 1, 2014, through June 30, 2016. In addition, examiners considered the community development loans originated by Ameris Bank between January 21, 2014, and October 3, 2016; all qualified investments either purchased prior to but still outstanding as of the evaluation date or purchased during the evaluation period; and all community development services performed during the evaluation period.

<sup>38</sup> The Ameris Bank Evaluation reviewed the bank’s activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

that the bank occasionally used innovative or complex investments to support its community development initiatives.

Examiners found that the delivery systems of Ameris Bank were reasonably accessible to essentially all portions of its AAs and that, to the extent changes had been made, the bank's opening and closing of branches throughout its AAs had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners further found that services and business hours did not vary in a way that inconvenienced certain portions of the bank's AAs, particularly LMI geographies and individuals, and that the bank provided a relatively high level of community development services within its AAs.

*Ameris Bank's Efforts since the Ameris Bank Evaluation*

Ameris represents that, since the Ameris Bank Evaluation, Ameris Bank has continued to meet the credit needs of its communities. Specifically, Ameris represents that Ameris Bank reported a significant volume of loans to first-time homebuyers in 2018. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

*CRA Performance of Fidelity Bank*

Fidelity Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 27, 2015 ("Fidelity Bank Evaluation").<sup>39</sup> The bank received "Low Satisfactory" ratings for the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.<sup>40</sup>

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<sup>39</sup> The Fidelity Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage, small business, and consumer loans from January 1, 2013, through December 31, 2014.

<sup>40</sup> Examiners conducted full-scope reviews of the bank's AAs in Georgia and Florida and the Atlanta Metropolitan Statistical Area ("MSA") AA, as well as a limited-scope review in the Jacksonville MSA AA. Due to Fidelity Bank's limited activity and time operating in the bank's four other AAs, the Fidelity Bank Evaluation did not include evaluations of the Georgia Non-MSA AA, Gainesville, Florida MSA AA, Deltona-Daytona Beach-Ormond Beach, Florida MSA AA, and Orlando-Kissimmee-Sanford, Florida MSA AA.

Examiners concluded that Fidelity Bank's lending performance reflected adequate responsiveness to the credit needs in the bank's AAs but that a small percentage of the loans were originated in the bank's AAs. Examiners found that the geographic distribution of the bank's home mortgage and consumer loans reflected a poor dispersion throughout the bank's AAs but found that the geographic distribution of the bank's small business loans reflected an adequate dispersion throughout the bank's AAs. Examiners determined that the bank's borrower profile revealed poor penetration among home mortgage customers of different income levels and businesses of different sizes but adequate penetration of consumer loans among certain borrowers of different income levels. Examiners noted that the bank had an adequate level of qualified community development investments and that the bank showed responsiveness to credit and community economic development needs. Finally, examiners found the bank's delivery systems to be reasonably accessible to essentially all portions of the bank's AAs, including in LMI areas and to LMI individuals.

*Views of the FDIC*

The Board has consulted with the FDIC regarding Ameris Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger application underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examination of Ameris Bank, which included an evaluation of the bank's compliance management system and a fair lending review of the bank's residential lending.

The Board has taken this information, as well as the CRA performance records of Ameris Bank and Fidelity Bank, into account in evaluating the proposal, including in considering whether Ameris has the experience and resources to ensure that Ameris Bank would help meet the credit needs of the communities within its AAs following the proposed transaction.

### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Ameris represents that, following consummation of the proposal, existing customers of Fidelity Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris Bank would provide a substantially similar suite of retail and commercial banking services and products as those provided by Fidelity Bank. In addition, Ameris asserts that Ameris Bank would provide Fidelity Bank customers access to products and services through a branch network and loan production offices spanning a much larger footprint, as well as enhanced online and mobile banking platforms and access to treasury services. Ameris contends that Ameris Bank would strive to maintain a strong working relationship with city and county governments in the former Fidelity Bank markets and that Ameris Bank would use all available media, including community publications, to market its credit services to the entire community. Ameris represents that Ameris Bank's board of directors would continue to review and approve all CRA programs and that local officers would routinely analyze demographic data and loan activity to ensure that lending services are accessible to all areas of the community, including LMI neighborhoods. Ameris indicates that Ameris Bank's CRA and consumer compliance programs and policies would be implemented at the combined institution.

### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

## Financial Stability

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”<sup>41</sup>

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.<sup>42</sup> These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.<sup>43</sup>

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction

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<sup>41</sup> 12 U.S.C. § 1842(c)(7).

<sup>42</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

<sup>43</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.<sup>44</sup>

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in total assets and a pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.<sup>45</sup> The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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<sup>44</sup> See People's United Financial, Inc., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

<sup>45</sup> Ameris and FSC offer a range of retail and commercial banking products and services. Ameris has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

## Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.<sup>46</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Ameris with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the

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<sup>46</sup> The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or bank to be acquired make a timely written recommendation of disapproval of the application. 12 U.S.C. §1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

In addition, the commenter requested an extension of the comment period for the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determines not to extend the comment period.

Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting under delegated authority.

By order of the Board of Governors,<sup>47</sup> effective June 10, 2019.

*Michele Taylor Fennell (signed)*

Michele Taylor Fennell  
Assistant Secretary of the Board

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<sup>47</sup> Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Brainard and Bowman.