

FEDERAL RESERVE SYSTEM

Apex Bancorp, Inc.
Camden, Tennessee

Order Approving the Acquisition of Shares of a Bank Holding Company

Apex Bancorp, Inc. (“Apex”), Camden, Tennessee, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to retain 9.7 percent and acquire up to 25.0 percent of the voting shares of Community Capital Bancshares, Inc. (“Community Capital”), and thereby indirectly acquire control of its state-chartered subsidiary bank, AB&T, both of Albany, Georgia.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 Federal Register 17333 (March 27, 2020)).⁴ The time for submitting comments has expired, and the Board has considered the

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1842.

³ The BHC Act contemplates that a bank holding company may seek to acquire less than a majority interest in another bank holding company or bank. See 12 U.S.C. § 1842(a)(3). On this basis, the Board previously has approved the acquisition by a bank holding company of less than a majority interest. See, e.g., C-B-G, Inc., 93 Federal Reserve Bulletin C88 (2007) (approving the acquisition of up to 35 percent of a bank holding company); Juniata Valley Financial Corp., 92 Federal Reserve Bulletin C171 (2006) (approving the acquisition of up to 39.2 percent of a bank). The Board notes, however, that the BHC Act requires Apex to receive the Board’s approval before directly or indirectly acquiring any additional shares of Community Capital or AB&T. See 12 U.S.C. § 1842(a)(3).

⁴ 12 CFR 262.3(b).

proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Apex is the 1283rd largest insured depository organization in the United States by total assets.⁵ Apex controls approximately \$469 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Apex controls Apex Bank, Camden, Tennessee, with total assets of \$581 million, which operates in Tennessee. Apex is the 51st largest insured depository organization in Tennessee, controlling deposits of approximately \$477 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁷

Community Capital is the 3018th largest insured depository organization in the United States by total assets. Community Capital controls approximately \$157 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. AB&T, with assets of \$195 million, operates in Georgia. Community Capital is the 103rd largest insured depository organization in Georgia, controlling deposits of approximately \$152 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Management of Community Capital opposes Apex's proposal and submitted comments to the Board urging denial on several grounds. The Board previously has stated, in evaluating acquisition proposals, that it must apply the criteria in the BHC Act in the same manner to all proposals, whether they are supported or opposed

⁵ Asset and deposit data are as of March 31, 2020, unless otherwise noted.

⁶ In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁷ State deposit, ranking, and market-share data are as of June 30, 2019, unless otherwise noted.

by the management of the institutions to be acquired.⁸ Section 3(c) of the BHC Act requires the Board to review each application in light of certain factors specified in the Act. The Board has long held that, if the statutory criteria are met, withholding approval based on other factors, such as whether the proposal is acceptable to the management of the organization to be acquired, would be outside the scope of factors the Board is authorized to consider under the BHC Act.⁹

Interstate and Deposit Cap 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.¹⁰ 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;¹¹ (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 (“CRA”)¹² and the applicant’s record of compliance with applicable state community reinvestment laws;¹³ 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

⁸ See, e.g., Central Pacific Financial Corp., 90 Federal Reserve Bulletin 93, 93 (2004); North Fork Bancorporation, Inc., 86 Federal Reserve Bulletin 767, 768 (2000); and The Bank of New York Company, Inc., 74 Federal Reserve Bulletin 257, 258–59 (1988).

⁹ See *supra* note 9.

¹⁰ 12 U.S.C. § 1842(d)(1)(A).

¹¹ 12 U.S.C. § 1842(d)(1)(B).

¹² 12 U.S.C. § 2901 *et seq.*

¹³ 12 U.S.C. § 1842(d)(3).

in the United States¹⁴ 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.¹⁵

For purposes of the BHC Act, the home state of Apex is Tennessee, and Community Capital's home state is Georgia.¹⁶ Georgia has a three-year minimum age requirement, and AB&T has been in existence for more than three years.¹⁷ In addition, Apex is well capitalized and well managed under applicable law, and its subsidiary bank, Apex Bank, has a "Satisfactory" rating under the CRA.

On consummation of the proposed transaction, Apex would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Apex and Community Capital do not have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including Apex's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

¹⁴ 12 U.S.C. § 1842(d)(2)(A).

¹⁵ 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).

¹⁶ See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

¹⁷ See Ga. Code Ann. § 7-1-628.8.

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 the business of banking in any relevant market.¹⁸ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant 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.¹⁹

The Board's analysis of the competitive effects of the proposal assumes a full merger between Apex, Community Capital, and their subsidiary banks, with Apex and Apex Bank as the surviving entities. Accordingly, the analysis assumes that AB&T would not compete independently of Apex and Apex Bank.

Apex Bank and AB&T do not compete directly in any banking market. The Department of Justice has advised the Board that consummation of the proposal would not likely have a significant 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.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any 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, the effectiveness of the institutions in combatting money

¹⁸ 12 U.S.C. § 1842(c)(1)(A).

¹⁹ 12 U.S.C. § 1842(c)(1)(B).

laundering, and any public comments on the proposal.²⁰ 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. 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. 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.

Apex, Community Capital, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal.²¹ The proposed acquisition would be funded from cash on hand at Apex.²² The asset quality, earnings, and liquidity of Apex are consistent with approval, and Apex appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects are considered consistent with approval.

²⁰ 12 U.S.C. § 1842(c)(2), (5), and (6).

²¹ The commenter asserted that the application did not provide sufficient justification regarding financial factors and future prospects, particularly in light of the COVID-19-induced economic crisis. The commenter also asserted that the acquisition by Apex may represent a risk to the financial condition of AB&T in light of COVID-19 by subjecting AB&T to the cross-guarantee assessment authority of the Federal Deposit Insurance Corporation ("FDIC"). In addition, the commenter expressed that Community Capital wishes to remain independent from Apex. The Board notes that Apex, which is in satisfactory financial condition, has acknowledged its statutory obligation to serve as a source of strength for AB&T. See 12 U.S.C. § 1831o-1; 12 CFR 225.4(a)(1).

²² Apex has the financial resources to fund the proposal.

The Board also has considered the managerial resources of the organizations involved.²³ The Board has reviewed the examination records of Apex, Community Capital, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Apex, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Apex, Community Capital, and their subsidiary depository institutions are each considered to be well managed. Apex has implemented revised policies and procedures to ensure that investments it makes in bank holding companies comply with the BHC Act. Apex's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and Apex's risk-management program appears consistent with approval of this proposal. The existing management and the risk-management policies and practices of Community Capital and AB&T would remain in place following the proposed acquisition, and these are considered satisfactory from a supervisory perspective.

Based on all the facts of record, including the supervisory record and managerial and operational resources of Apex, the Board determines that considerations relating to the financial and managerial resources and future prospects of the

²³ The commenter asserted that Apex failed to comply with the BHC Act and the Board's rules by acquiring shares of Community Capital without prior approval. Apex represents that it had an open buy offer to purchase over-the-counter shares of Community Capital, which is generally a lightly traded stock. However, during the stock market volatility in March, the volume of shares available for purchase greatly increased and, as a result of Apex's open buy order, Apex automatically acquired shares of Community Capital without the required prior approval under the BHC Act. Apex represents that the violation of the BHC Act was inadvertent and that it has taken appropriate steps to prevent future violations.

organizations involved in the proposal, as well as the records of effectiveness of Apex and Community Capital 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.²⁴ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and 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 they operate, consistent with their safe and sound operation,²⁵ 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.²⁶

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 acquiring institution's business model, its marketing and outreach plans, its plans after consummation, and any other information the Board deems relevant.

²⁴ 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 2901(b).

²⁶ 12 U.S.C. § 2903.

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 Apex Bank and AB&T; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Apex; and the public comments received on the proposal.

Records of Performance under the CRA

In evaluating the CRA performance of an institution, the Board generally considers the institution's most recent CRA evaluation, as well as information and views provided by the appropriate federal financial supervisors.²⁷ In this case, the Board considered the supervisory views of the FDIC.

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.²⁸ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site 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 to evaluate the performance of a small insured depository institution, such as AB&T, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities 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 Home Mortgage Disclosure Act of 1975,²⁹ automated loan reports, and other reports generated

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

²⁸ 12 U.S.C. § 2906.

²⁹ 12 U.S.C. § 2801 et seq.

by the institution. The institution's lending performance is based on the institution's (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in the institution's assessment areas ("AAs"), (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about the institution's performance. In addition to the lending test, intermediate small institutions, such as Apex Bank, are subject to a community development test, which evaluates the number and amounts of the institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness through such activities to community development lending, investment, and service needs.³⁰

CRA Performance of Apex Bank

Apex Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 25, 2019 ("Apex Bank Evaluation").³¹ Apex Bank received "Satisfactory" ratings for both the Lending Test and the Community Development Test.³²

Examiners determined that the bank's loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and the AAs' credit needs.

³⁰ See 12 CFR 228.26.

³¹ The Apex Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The Apex Bank Evaluation reviewed a sample of commercial loans from January 1, 2018, to December 31, 2018. Examiners also reviewed community development loans, qualified investments, and community development services since Apex Bank's prior exam dated February 22, 2016. Examiners also considered qualified investments purchased prior to February 22, 2016, that remained outstanding.

³² The Apex Bank Evaluation reviewed the bank's activities in the three non-contiguous Tennessee Non-Metropolitan Statistical Area AAs; the Hawkins County, Tennessee, Metropolitan Statistical Area AA; and the Williamson County, Tennessee, Metropolitan Statistical Area AA.

Examiners also noted that Apex Bank achieved an excellent record regarding its geographic distribution of loans and borrower profile performance factors throughout its AAs. In addition, examiners noted that Apex Bank granted a majority of the loans reviewed outside of its AAs.

Examiners found that Apex Bank demonstrated an overall adequate performance regarding its community development activities and an excellent performance regarding its responsiveness to community development needs. Examiners noted that the bank's performance in extending community development loans, qualified investments, and community development services was adequate. Examiners also found that the availability of Apex Bank's financial services to LMI individuals and census tracts was adequate and that the bank's distribution of branches in moderate-income census tracts was excellent.

CRA Performance of AB&T

AB&T was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of September 25, 2018 ("AB&T Evaluation").³³ AB&T received a "Satisfactory" rating for the Lending Test.³⁴

Examiners found that AB&T demonstrated satisfactory performance within its AA. Examiners noted that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the majority of the bank's home mortgage and small business loans were originated in the bank's AA. Examiners also noted that AB&T's geographic distribution of loans reflected overall reasonable penetration of small business loans and home mortgage loans given the level of competition and economic conditions in the AA. In addition, examiners found that the

³³ The AB&T Evaluation was conducted using the Small Institutions Examination Procedures, which focuses only on the Lending Test. Examiners evaluated the bank's performance based on home mortgage loans originated between January 1, 2016, and December 31, 2017, and the bank's small business loans originated between January 1, 2017, and December 31, 2017.

³⁴ The AB&T Evaluation reviewed the bank's activities in the bank's sole AA, comprising Dougherty and Lee counties, both in Georgia.

distribution of loans to businesses of different sizes and individuals of different income levels reflected an overall reasonable penetration.

Views of the FDIC

The Board has considered the records of Apex Bank and AB&T in complying with fair lending and other consumer protection laws. The FDIC conducted recent consumer compliance examinations of Apex Bank and AB&T, which included reviews of the banks' consumer compliance programs and their compliance with consumer protection laws and regulations. The Board has taken this information into account in evaluating this proposal.

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, confidential supervisory information, information provided by Apex, the comments on the proposal; and the 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.³⁵

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in

³⁵ As discussed above, Apex is acquiring a minority interest in Community Capital. Apex represents that the proposal would not result in any changes to the compliance management programs, products, or services currently offered by AB&T and Apex Bank. Upon consummation of the proposed transaction, both Community Capital and AB&T would continue to operate independently.

greater or more concentrated risks to the stability of the United States banking or financial system.”³⁶

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.³⁷ 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 to the broader economy.³⁸

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

³⁶ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

³⁷ Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

³⁸ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁹

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 with less than \$10 billion in total assets and a pro forma organization with less than \$100 billion in total assets. Apex's acquisition of a minority interest in Community Capital would not result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. The transaction would not be likely to pose systemic risks.

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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. 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 Apex with all the conditions imposed in this order, including receipt of all required regulatory approvals, and with any commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the

³⁹ 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.

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 St. Louis, acting under delegated authority.

By order of the Board of Governors,⁴⁰ effective August 4, 2020.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁴⁰ Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Bowman and Brainard.