



Legal Developments: Second Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

United Bankshares, Inc.
Charleston, West Virginia

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-10 (April 6, 2017)

United Bankshares, Inc. (“UBI”), Charleston, West Virginia, and its subsidiary, UBV Holding Company, LLC (“UBV”, and together with UBI, “United”), Fairfax, Virginia, both bank holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ have requested the Board’s approval under section 3 of the BHC Act² to acquire Cardinal Financial Corporation (“Cardinal”) and thereby indirectly acquire Cardinal Bank, both of McLean, Virginia.

In addition, United’s subsidiary state member bank, United Bank (“United Bank-Virginia”), Fairfax, Virginia, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Cardinal Bank, with United Bank-Virginia as the surviving entity.³ United Bank-Virginia also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Cardinal Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 74803 (October 27, 2016)).⁵ 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, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

UBI, with consolidated assets of approximately \$14.3 billion, is the 99th largest insured depository organization in the United States.⁶ UBI controls approximately \$10.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These locations are listed in the Appendix.

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of September 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

of insured depository institutions in the United States.⁷ UBI controls two subsidiary banks, United Bank-Virginia and United Bank, Inc. (“United Bank-West Virginia”), Parkersburg, West Virginia,⁸ which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia. UBI is the 10th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$1.1 billion in the District of Columbia, which represent 2.4 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, UBI is the 18th largest insured depository organization in Maryland, controlling deposits of approximately \$761.1 million in Maryland, which represent 0.6 percent of the total deposits of insured depository institutions in that state, and the 8th largest insured depository organization in Virginia, controlling deposits of approximately \$4.1 billion in Virginia, which represent 1.5 percent of the total deposits of insured depository institutions in that state.

Cardinal, with consolidated assets of approximately \$4.2 billion, is the 228th largest insured depository organization in the United States. Cardinal controls approximately \$3.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cardinal controls Cardinal Bank, which operates in the District of Columbia, Maryland, and Virginia. Cardinal is the 19th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$133.8 million in the District of Columbia, which represent 0.3 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, Cardinal is the 43rd largest insured depository organization in Maryland, controlling deposits of approximately \$188.6 million in Maryland, which represent 0.2 percent of the total deposits of insured depository institutions in that state, and the 10th largest insured depository organization in Virginia, controlling deposits of approximately \$3.0 billion in Virginia, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, UBI would become the 86th largest insured depository organization in the United States, with consolidated assets of approximately \$18.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. UBI would control consolidated deposits of approximately \$13.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In the District of Columbia, UBI would become the 9th largest insured depository organization, controlling deposits of approximately \$1.2 billion in the District of Columbia, which represent 2.7 percent of the total deposits of insured depository institutions in that jurisdiction. In Maryland, UBI would become the 16th largest insured depository organization, controlling deposits of approximately \$949.7 million in Maryland, which represent 0.7 percent of the total deposits of insured depository institutions in that state. In Virginia, UBI would become the 7th largest insured depository organization, controlling deposits of approximately \$7.1 billion in Virginia, which represent 2.6 percent of the total deposits of insured depository institutions in that state.

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 to acquire control of a

⁷ In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

⁸ United Bank-Virginia is a wholly owned subsidiary of UBV, and UBV is a wholly owned subsidiary of UBI. UBI controls United Bank-West Virginia, a state member bank, through a separate mid-tier holding company, UBC Holding Company, Inc., Charleston, West Virginia.

bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁹ Under this section, the Board 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.¹⁰ In addition, the Board may not approve an interstate application if the bank holding company controls, or would upon consummation of the proposed transaction control, more than 10 percent of the total deposits of insured depository institutions in the United States¹¹ or, in certain circumstances, if the bank holding company would upon consummation 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.¹²

For purposes of the BHC Act, the home state of UBI is West Virginia, and the home state of both UBV and Cardinal Bank is Virginia.¹³ Cardinal Bank is also located in the District of Columbia and Maryland. UBI and UBV are well capitalized and well managed under applicable law, and United Bank-Virginia has an “Outstanding” Community Reinvestment Act (“CRA”)¹⁴ rating. There are no minimum age requirements under the laws of the District of Columbia, Maryland, or Virginia that would apply to United’s acquisition of Cardinal, and Cardinal Bank has been in existence for more than five years.¹⁵

On consummation of the proposed transaction, UBI would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in the District of Columbia, Maryland, and Virginia, the only states in which United and Cardinal have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including United’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.¹⁶

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1842(d)(1)(B).

¹¹ Similarly, the Bank Merger Act provides that, in general, the Board may not approve a bank merger if the transaction involves insured depository institutions with different home states and the resulting bank would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13). For purposes of the Bank Merger Act, the home state of both United Bank-Virginia and Cardinal Bank is Virginia. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). Accordingly, the deposit cap requirement of the Bank Merger Act does not apply to the proposed bank merger.

¹² 12 U.S.C. § 1842(d)(2)(A) and (B). 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. For purposes of section 3(d) of the BHC Act, 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).

¹³ *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. A state bank’s home state is the state in which the bank is chartered.

¹⁴ 12 U.S.C. § 2901 *et seq.*

¹⁵ *See* D.C. Code §26-737; Md. Code Ann., Fin. Inst. §§ 5-901 to 5-910; Va. Code Ann. §6.1-44.18.

¹⁶ Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) permits the Board, in certain circumstances, to approve interstate merger transactions that would otherwise be prohibited under state law. 12 U.S.C. § 1831u(a)(1). For purposes of the Riegle-Neal Act, an “interstate merger transaction” is one in which the insured banks proposing to merge have different home states. *See* 12 U.S.C. § 1831u(g)(4) and (6). The home state of both United Bank-Virginia and Cardinal Bank is Virginia; therefore, section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit 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. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition 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 community to be served.¹⁷

UBI and Cardinal have subsidiary depository institutions that compete directly in the Washington, District of Columbia, banking market (“Washington market”) and the Fredericksburg, Virginia, banking market (“Fredericksburg market”).¹⁸ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that UBI would control;¹⁹ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²⁰ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Washington and Fredericksburg markets. On consummation of the proposal, the Washington market would remain unconcentrated and the Fredericksburg market would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, and numerous competitors would remain in the markets.²¹

¹⁷ 12 U.S.C. § 1842(c)(1) and 1828(c)(5).

¹⁸ The Washington market is defined as the District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George’s counties, all in Maryland; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren counties in Virginia; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, all in Virginia; and Jefferson County, West Virginia. The Fredericksburg market is defined as the city of Fredericksburg, Virginia; and Caroline, King George, Orange, Spotsylvania, and Westmoreland counties, all in Virginia.

¹⁹ Deposit and market share data are as of June 30, 2016, 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 deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).*

²⁰ 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.

²¹ UBI operates the 8th largest depository institution in the Washington market, controlling approximately \$5.5 billion in deposits, which represent approximately 2.9 percent of market deposits. Cardinal operates the 11th largest depository institution in the same market, controlling deposits of approximately \$3.2 billion, which represent 1.7 percent of market deposits. On consummation of the proposed transaction, UBI would become the 7th largest depository organization in the market, controlling deposits of approximately \$8.7 billion, which represent approximately 4.6 percent of market deposits. The HHI for the Washington market would increase by 10 points to 995, and 81 competitors would remain in the market.

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, including the Washington and Fredericksburg markets. 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 the Washington or Fredericksburg banking 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 the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²² In its evaluation of the 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, including capital adequacy, asset quality, 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.

UBI and Cardinal are well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of United Bank-Virginia and Cardinal Bank.²³ The asset quality, earnings, and liquidity of United Bank-Virginia and Cardinal Bank are consistent with approval, and United appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects 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

UBI operates the 9th largest depository institution in the Fredericksburg market, controlling approximately \$55.4 million in deposits, which represent approximately 1.8 percent of market deposits. Cardinal operates the 10th largest depository institution in the same market, controlling deposits of approximately \$43.9 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, UBI would become the 8th largest depository organization in the market, controlling deposits of approximately \$99.3 million, which represent approximately 3.2 percent of market deposits. The HHI for the Fredericksburg market would increase by 5 points to 1749, and 16 competitors would remain in the market.

²² 12 U.S.C. §§ 1842(c)(2), (5), and (6); and 1828(c)(5) and (11).

²³ Applicants would merge Cardinal with and into UBV (with UBV as the survivor). At the time of the merger, each share of Cardinal common stock would be converted into a right to receive UBI common stock, based on an exchange ratio; holders of fractional shares would be entitled to a cash equivalent. United has the financial resources to fund the cash portion of the exchange.

of United, Cardinal, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by United; 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.

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

The Board also has considered United's plans for implementing the proposal. United has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. With certain exceptions, United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, United's management has the experience and resources to operate the combined organization in a safe and sound manner, and United plans to integrate Cardinal's existing management and personnel in a manner that augments United's management.²⁴

Based on all the facts of record, including United's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of United and Cardinal 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 and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁵ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, 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 the communities to be served. In this evaluation, 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 they operate, consistent with their safe and sound operation,²⁶ 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,

²⁴ On consummation, the UBI board of directors would be increased by one, and an individual currently serving as an executive director on the board of directors of Cardinal and Cardinal Bank would serve on the UBI board. Additionally, the United Bank-Virginia board of directors would be increased by two individuals that would be chosen by Cardinal.

²⁵ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁶ 12 U.S.C. § 2901(b).

including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁷

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 comments received on the proposal. The Board also may consider the institution’s business model, its 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 United Bank-Virginia and Cardinal Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by United; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from two commenters opposing the proposal.²⁸ Both commenters objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by United Bank-Virginia in the Washington, District of Columbia, Metropolitan Statistical Area (“Washington MSA”), as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”)²⁹ for the years 2013 through 2015. One commenter also asserted that, in the Washington MSA, United Bank-Virginia made a disproportionately low number of home purchase loans to majority-minority and LMI census tracts, and United Bank-West Virginia made a disproportionately low number of home purchase loans to LMI borrowers, as reported under HMDA for 2013 through 2015. Additionally, a commenter criticized the rate at which George Mason Mortgage, LLC (“George Mason”), a subsidiary of Cardinal Bank, denied applications by African Americans and Hispanics, compared to the rate of denials for whites, for conventional home purchase loans in the Washington MSA, as reported under HMDA for 2015.

One commenter also generally alleged that United Bank-Virginia and United Bank-West Virginia have inadequate records of helping to meet the convenience and needs of the communities where they do business because United Bank-Virginia received a “Low Satisfactory” rating on its Service Test in the Commonwealth of Virginia and United Bank-West Virginia received a “Low Satisfactory” rating on its Investment Test for the overall bank and in the Wheeling, West Virginia-Ohio Multistate Metropolitan Statistical Area, the State of West Virginia, and the Commonwealth of Pennsylvania, in the banks’ most recent CRA examinations, both as of 2015.

²⁷ 12 U.S.C. § 2903.

²⁸ One commenter requested that the Board not approve the proposal until United enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. *See, e.g., Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

²⁹ 12 U.S.C. §2801 *et seq.*

Business of the Involved Institutions and Response to Comments

United Bank-Virginia offers a broad range of retail and commercial banking products and services to consumers and businesses. Through its network of 54 branches located in the District of Columbia, Maryland, and Virginia, United Bank-Virginia offers a variety of banking products, including commercial, residential, agricultural, and consumer loans.

Cardinal Bank offers a similar range of retail and commercial products through 29 branches located in the District of Columbia, Maryland, and Virginia. Its products include checking and savings accounts, certificates of deposit, residential mortgages, treasury management services, commercial and consumer loans, and brokerage services. Cardinal Bank also provides residential mortgages through its subsidiary, George Mason.

In response to the comments, United represents that United Bank-Virginia and Cardinal Bank are currently meeting the credit needs of their communities, including LMI and minority individuals, that the proposal would benefit the existing customers of both United Bank-Virginia and Cardinal Bank, and that the combined institution would continue to meet the credit needs of its entire community following consummation of the proposal. United represents that both United Bank-Virginia and Cardinal Bank have instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations.

With respect to United Bank-Virginia's lending in the Washington MSA, United represents that it has taken a number of steps, including creating a position solely dedicated to its fair lending program, to better serve minority communities. United also notes that United Bank-Virginia's record of lending in the Washington MSA shows a positive trend in the number of home purchase loans located in majority-minority census tracts. Additionally, United notes that, when United Bank-Virginia's lending in all HMDA categories is considered, the bank outperformed peer lenders in lending in LMI areas in 2014. United also asserts that the housing market is relatively expensive in the Washington MSA, which hinders the ability of low-income borrowers to purchase homes in the area, meaning that United Bank-Virginia has few potential low-income mortgage customers. In addition, United represents that a substantial amount of its small business lending within the Washington MSA is made to businesses located in majority-minority census tracts.

United argues that United Bank-Virginia's overall CRA rating of "Outstanding" and United Bank-West Virginia's overall CRA rating of "Satisfactory" are consistent with approval, notwithstanding the specific ratings noted by a commenter. United notes that United Bank-Virginia received an overall bankwide "High Satisfactory" rating on the Service Test and that, in the Commonwealth of Virginia, examiners found that the bank's delivery systems and branch locations were accessible to all segments of the assessment areas and that the bank had an adequate level of participation in qualified community development services that generally benefit affordable housing and micro-enterprise development.

With respect to a commenter's allegation regarding United Bank-West Virginia's record of lending to LMI individuals within the Washington MSA, United notes that United Bank-West Virginia outperformed peer lenders, when considering all categories of HMDA loans, in LMI areas within the Washington MSA. Additionally, United notes that United Bank-West Virginia's distribution of HMDA loans by level of borrower income for the years 2013 through 2015 was similar to that of the aggregate of lenders in the Washington MSA, and that the bank's lending to LMI borrowers in the Washington MSA as reported in 2015 HMDA data outperformed peer lenders.

In response to one commenter's criticism of United Bank-West Virginia's "Low Satisfactory" CRA rating on the Investment Test for the overall bank and in several of the bank's assessment areas, United notes that United Bank-West Virginia has significantly increased its level of community development investment since the bank's most recent CRA examination. United also represents that United Bank-West Virginia is taking steps to improve its investment performance in Pennsylvania and West Virginia, including creating new partnerships with community development finance institutions, starting a relationship with a company that is awaiting a Small Business Investment Company designation from the United States Small Business Administration, and making an investment in a school district in which a majority of students qualify for a free or reduced-price lunch.

With respect to George Mason's lending in the Washington MSA, United represents that George Mason outperformed peer lenders in lending in LMI areas. Additionally, United asserts that George Mason conducts various activities that are focused on serving minority and LMI communities, including marketing and outreach to historically underserved neighborhoods and populations; periodic reviews of George Mason's policies, procedures, and lending outcomes to ensure that lender discretion is clearly outlined and to confirm compliance with fair lending laws; and community outreach efforts to support lending in LMI and minority areas. United represents that George Mason's fair lending policies with respect to first mortgage lending would be adopted in the combined entity.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.³⁰ In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Richmond ("Reserve Bank") and 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.³¹ 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 lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 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 amount of home mortgage, small business, small

³⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³¹ 12 U.S.C. § 2906.

farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas and the number and amount 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 amount of loans to low-, moderate-, middle-, and upper-income individuals;³² (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

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.³³ Consequently, HMDA data must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of United Bank-Virginia

United Bank-Virginia was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of October 19, 2015 ("United Bank-Virginia Evaluation").³⁴ The bank received an "Outstanding" rating for the Lending Test, and "High Satisfactory" ratings for both the Investment Test and the Service Test.

Examiners concluded that the bank's overall lending activity was excellent relative to the bank's capacity to lend and the economic conditions within the bank's market areas. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, examiners found that the geographic distribution of the bank's loans reflected good penetration throughout its assessment areas and that the distribution of its borrowers reflected good penetration among borrowers of different income levels and businesses of different sizes. Additionally, examiners found that United Bank-Virginia was a leader in community development lending.

In the Washington, D.C., assessment area, an area of concern for the commenters, United Bank-Virginia's performance under the Lending Test was rated "Outstanding." Examiners found that the bank's lending activity in the assessment area was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners found that the geographic distribution of the bank's loans in the Washington, D.C., assessment area was excellent, while the overall borrower distribution was good. Examiners also

³² Examiners also consider the number and amount 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).

³³ Other data 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.

³⁴ The United Bank-Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. The evaluation period for community development lending, investments, and services was June 4, 2013, through October 19, 2015.

The United Bank-Virginia Evaluation included full-scope evaluations of the Washington-Baltimore-Arlington, D.C.-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area ("Washington CSA") and the Harrisonburg-Staunton-Waynesboro, Virginia, CSA. Limited scope evaluations were performed in the Charlottesville, Virginia, MSA and in Shenandoah County, Virginia.

noted that United Bank-Virginia was a leader in providing community development loans in the assessment area.

In the Commonwealth of Virginia, another area of concern to a commenter, United Bank-Virginia's performance under the Lending Test was rated "High Satisfactory." Examiners found that the bank's lending activity within the statewide market was consistent with the bank's capacity and that the bank offered a broad range of loan products to meet the needs of the statewide area. Examiners also noted that the bank's borrower distribution throughout the state was good and the geographic distribution of its loans was adequate.

With respect to the Investment Test, examiners found that the bank had a high level of participation in community development investments, showing responsiveness to community credit needs. Examiners noted that the bank made a number of investments to support affordable housing initiatives, as well as charitable donations to a variety of community development organizations that facilitate small business development, revitalize or stabilize LMI geographies, and focus on local job creation within the bank's assessment areas. In both the Washington, D.C., assessment area and Virginia, United Bank-Virginia's performance under the Investment Test was rated "High Satisfactory." Examiners in both areas found that the bank maintained a significant level of qualified investments that benefit the bank's market areas.

Examiners found United Bank-Virginia's delivery systems and branch locations to be accessible to all segments of the bank's assessment areas. Examiners noted that branch closings by the bank had not adversely affected LMI neighborhoods. Additionally, examiners noted that the bank engaged in a high level of community development services within its primary market areas. Overall, examiners noted that the bank showed a high level of support for affordable housing efforts, community services, and economic development within its assessment areas.

In the Washington, D.C., assessment area, examiners rated United Bank-Virginia's performance on the Service Test as "High Satisfactory." Examiners noted that the bank's delivery systems and branch locations were accessible to all segments of the assessment area and that the bank had a relatively high level of participation in qualified community development services benefiting the assessment area.

In Virginia, United Bank-Virginia's performance on the Service Test was rated as "Low Satisfactory." Examiners found that the bank's delivery systems in Virginia were reasonably accessible to all portions of United Bank-Virginia's market areas and to people of various income levels. Additionally, examiners noted that the products and services offered by United Bank-Virginia within Virginia were representative of those offered by the institution overall and that the bank's employees participated in an adequate level of community development activities involving the provision of financial expertise to organizations assisting in small business funding.

United Bank-Virginia's Efforts since the 2015 CRA Evaluation

United represents that United Bank-Virginia has taken steps to further strengthen its CRA performance since the United Bank-Virginia Evaluation. United Bank-Virginia asserts that it has continued to offer several special loan programs throughout its assessment areas that benefit LMI borrowers, small businesses, affordable housing projects, and other community development initiatives. Additionally, United Bank-Virginia represents that it has increased the number and dollar amount of donations to community development activities and social service organizations in its assessment areas, and that the bank's employees have volunteered by teaching financial literacy to students at 75 local schools.

CRA Performance of United Bank-West Virginia

United Bank-West Virginia received a “Satisfactory” CRA performance rating on its most recent CRA examination by the Reserve Bank, as of October 19, 2015 (“United Bank-West Virginia Evaluation”).³⁵ The bank received ratings of “High Satisfactory” for the Lending Test, “Low Satisfactory” for the Investment Test, and “Outstanding” for the Service Test.

Examiners found that United Bank-West Virginia’s overall lending levels were consistent with the bank’s capacity and market presence. According to examiners, a high percentage of the institution’s reported HMDA and small business loans was originated within the bank’s assessment areas. Additionally, examiners noted that the geographic distribution of the bank’s lending was excellent overall. Examiners also found that the bank’s borrower distribution performance was good overall.

In the Washington, D.C., assessment area, Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated United Bank-West Virginia’s performance on the Lending Test as “High Satisfactory.” In the Washington, D.C., assessment area, examiners found that the bank’s lending activity was consistent with the bank’s capacity and helped to meet identified community credit needs. Additionally, examiners noted that the geographic distribution of the bank’s lending was excellent, while the borrower distribution of loans was good. Examiners also noted that the bank originated a relatively high level of community development loans.

In the Wheeling assessment area, examiners found that the bank’s lending activity was good and consistent with the bank’s capacity and that it helped to meet identified credit needs. Examiners noted that the geographic and borrower lending distributions within the assessment area was good for each lending product reviewed. Additionally, examiners found that the bank originated an adequate level of community development loans within the assessment area.

In West Virginia and Pennsylvania, examiners found that the bank’s lending activity in both states was consistent with the bank’s capacity and that the bank offered a broad spectrum of loan products in an effort to meet local credit needs. Examiners noted that the geographic distribution of the bank’s lending within the states was excellent and adequate, respectively, while borrower lending distribution was good. Additionally, examiners found that the bank was a leader in providing community development loans within the states.

As noted, United Bank-West Virginia’s overall performance under the Investment Test was rated “Low Satisfactory.” Examiners noted that the bank maintained an adequate level of qualified community development investments when considering the available opportunities for such investments. Examiners also noted that the bank had made charitable donations supporting organizations whose operations primarily support LMI individuals.

³⁵ The United Bank-West Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. Examiners reviewed qualified community development loans that were originated from June 3, 2013, through October 19, 2015. The evaluation period for investments and services was June 3, 2013, through October 19, 2015.

The United Bank-West Virginia Evaluation included full-scope evaluations of the Washington CSA; the Wheeling, West Virginia-Ohio, CSA (“Wheeling assessment area”); the Charleston-Huntington-Ashland, West Virginia-Ohio-Kentucky, CSA; the Morgantown, West Virginia, MSA; the Braxton, West Virginia, nonmetropolitan statistical area; and the Pittsburgh, Pennsylvania, MSA. Limited scope evaluations were performed in the Beckley, West Virginia, MSA; the Parkersburg-Marietta-Vienna, West Virginia-Ohio, MSA; the Weirton-Steubenville, West Virginia-Ohio, MSA; and the Jackson, West Virginia, nonmetropolitan statistical area.

Examiners rated United Bank-West Virginia's performance under the Investment Test as "High Satisfactory" within the Washington, D.C., assessment area. Examiners found that the bank's level of qualified investments maintained good responsiveness in the assessment area. In the Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated the bank's performance under the Investment Test as "Low Satisfactory." In each of these geographical areas, examiners found that the bank maintained an adequate level of qualified investments.

Examiners found that United Bank-West Virginia's delivery systems and branch locations were readily accessible to all segments of the bank's assessment areas. Additionally, examiners noted that the bank was a leader in supporting community development services throughout its assessment areas.

In the Washington, D.C., assessment area and the Wheeling assessment area, examiners rated United Bank-West Virginia's performance in the Service Test as "High Satisfactory." Examiners noted that, in both areas, the bank's delivery systems and branch locations were readily accessible to all segments of the assessment area and that the bank had an adequate level of participation in qualified community development services benefiting the assessment area. In West Virginia, examiners rated the bank's performance in the Service Test as "Outstanding." Examiners found that the bank's delivery systems and branch locations were readily accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank was a leader within its market areas in the state in providing community development services. In Pennsylvania, examiners rated the bank's performance in the Service Test as "High Satisfactory." Examiners found that the bank's delivery systems and branch locations were accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank and its employees participated in a relatively high level of community development activities.

United Bank-West Virginia's Efforts since the 2015 CRA Evaluation

United represents that, since the United Bank-West Virginia Evaluation, the bank has significantly increased its community development investment levels. As noted, United Bank-West Virginia has formed partnerships in West Virginia to explore new investment opportunities and has made, or is in the process of finalizing, investments in West Virginia to support rural health development and in Pennsylvania to support the education of local LMI students.

CRA Performance of Cardinal Bank

Cardinal Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 28, 2015 ("Cardinal Bank Evaluation").³⁶ The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

Examiners found that the bank's overall lending levels reflected good responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment area. Overall, examiners found that the geographic distribution of the bank's loans reflected adequate penetration throughout the assessment area. Examiners found that the bank's distribution of

³⁶ The Cardinal Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed the bank's loans reported pursuant to the HMDA and the CRA for 2013, 2014, and the first two quarters of 2015. The evaluation period for the Investment Test and the Service Test was April 30, 2013, through September 29, 2015. The Cardinal Bank Evaluation included a full-scope evaluation of the Washington CSA.

borrowers reflected a good penetration among retail customers of different income levels. Additionally, examiners found that the bank used flexible lending practices in order to serve the assessment area's credit needs. Examiners noted that the bank made a relatively high level of community development loans and that these loans were responsive to the community's credit needs.

Examiners found that Cardinal Bank had a significant level of qualified community development investments and grants and that the bank occasionally acted in a leadership position for such investments. Examiners noted that the bank exhibited a good responsiveness to the credit and community economic development needs of its assessment area.

Examiners found Cardinal Bank's delivery systems to be accessible to essentially all portions of the bank's assessment area. Examiners noted that the bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems. Additionally, examiners noted that the bank's services did not vary in a way that inconvenienced portions of its assessment area or any group of individuals. Examiners also noted that the bank provided a relatively high level of community development services in its assessment area.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of United Bank-Virginia and United Bank-West Virginia conducted by Reserve Bank examiners, which included a review of the banks' compliance risk-management program and the banks' compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated United Bank-Virginia's and United Bank-West Virginia's fair lending compliance management program, including the banks' fair lending-related policies, procedures, and limits; board and senior management oversight of the banks' fair lending management program; fair lending risk-monitoring and management information systems; and internal controls relating to fair lending.

The Board also has considered the results of a recent consumer compliance examination of Cardinal Bank conducted by FDIC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations.

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. United represents that it plans to continue its current offering of products and services upon consummation of the proposal. United also represents that existing customers of Cardinal Bank would have access to a more extensive complement of products and services than those currently available to them, including new or enhanced products and services in areas such as brokerage services, custody, trust and estate services, business checking products and services, cash management, government contract lending, and nonprofit services. Additionally, United asserts that customers of Cardinal Bank would benefit from a more expansive branch and ATM network. United also represents that existing customers of United Bank-Virginia would benefit from access to products and services offered by George Mason. United represents that the proposal would create an expanded product offering for first-time home buyers and provide additional opportunities for United Bank-Virginia's LMI customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by United, the public comments 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 concludes that the convenience and needs considerations are consistent with approval.

The Board also expects United to continue to improve its performance under the investment tests in West Virginia and Pennsylvania and to ensure that its efforts to help meet the convenience and needs of the communities it serves are commensurate with its size, activities, and prominence in its communities.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's risk "to the stability of the United States banking or financial system."³⁷

To assess the likely effect of a proposed transaction on the stability of the U.S. 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.³⁸ 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.³⁹

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that results 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 would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁰

³⁷ Sections 604(d) and (f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602, codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

³⁸ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁹ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

⁴⁰ 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.

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in a variety of retail commercial banking activities.⁴¹ 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 U.S. 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.

Establishment of Branches

United Bank-Virginia has applied under section 9 of the FRA to establish branches at the current locations of Cardinal Bank.⁴² The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴³ Specifically, the Board has considered United Bank-Virginia's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.⁴⁴ For the reasons discussed in this order, the Board finds these factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁴⁵ In reaching its conclusion, the Board has considered

⁴¹ In each of the activities in which it engages, United has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

⁴² 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that, under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of United Bank-Virginia's branches would be permissible under applicable state law. *See* D.C. Code §26-735(b); Md. Code, Com. Law §5-1003(a)(3); Va. Code Ann. §6.2-831.

⁴³ 12 U.S.C. § 322; 12 CFR 208.6.

⁴⁴ Upon consummation of the proposed transaction, United Bank-Virginia's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁴⁵ A commenter requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on October 27, 2016, and in a relevant newspaper of general circulation (*The Washington Post*) on October 20, October 27, and November 10, 2016. The comment period ended on November 25, 2016. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by UBI and UBV with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the 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 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 fifteenth 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 by the Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective April 6, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches to Be Established by United

District of Columbia Branches

- 1776 K Street, NW
Washington, DC 20006
- 1825 Wisconsin Avenue, NW
Washington, DC 20007

Maryland Branches

- 7315 Wisconsin Avenue
Bethesda, Maryland 20814
- 1807 Rockville Pike
Rockville, Maryland 20852

Virginia Branches

- 1737 King Street
Alexandria, Virginia 22207

- 4115 Annandale Road
Annandale, Virginia 22207
- 5335 Lee Highway
Arlington, Virginia 22207
- 2100 North Glebe Road
Arlington, Virginia 22207
- 2505 Wilson Boulevard
Arlington, Virginia 22201
- 6402 Williamsburg Boulevard
Arlington, Virginia 22207
- 4300 Wilson Boulevard
Suite 102
Arlington, Virginia 22203

Community Bank System, Inc.
DeWitt, New York

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017-12 (April 26, 2017)

Community Bank System, Inc. (“Community”), Dewitt, New York, a financial 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 acquire Merchants Bancshares, Inc. (“Merchants”), and thereby indirectly acquire Merchant’s subsidiary bank, Merchants Bank, both of South Burlington, Vermont. Following the proposed acquisition, Merchants Bank would be merged into Community’s subsidiary bank, Community Bank, N.A. (“Community Bank”), Canton, New York.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 92814 (December 20, 2016)).⁴ 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.

Community, with consolidated assets of approximately \$8.7 billion, is the 142nd largest insured depository organization in the United States. Community controls approximately \$7.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Community controls Community Bank, which operates in New York and Pennsylvania.

Merchants, with consolidated assets of approximately \$2.0 billion, is the 406th largest insured depository organization in the United States, controlling approximately \$1.5 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Merchants controls Merchants Bank, which operates in Vermont and Massachusetts.

On consummation of the proposal, Community would become the 122nd largest insured depository organization in the United States, with consolidated assets of approximately \$10.7 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Community would control total deposits of approximately \$8.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Vermont, Community would become the 3rd largest insured depository organization, controlling deposits of approximately \$1.3 billion, which represent approximately 11.1 percent of the total deposits of insured depository institutions in that state.⁶ In Massachusetts, Community would become the 84th largest insured depository organization, controlling deposits of approximately \$92.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. §§ 1842.

³ The merger of Merchants Bank into Community Bank is subject to approval of the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on April 6, 2017.

⁴ 12 CFR 262.3(b).

⁵ Nationwide asset and deposit data are as of September 30, 2016, unless otherwise noted.

⁶ State deposit data are as of June 30, 2016, unless otherwise noted.

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 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 is prohibited under state law.⁷ Under this section, the Board 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.⁸ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company 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.⁹

For purposes of the BHC Act, the home state of Community is New York, and Merchants Bank's home state is Vermont.¹⁰ Merchants Bank also operates in Massachusetts. Community is well capitalized and well managed under applicable law, and Community Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").¹¹ Vermont has no statutory minimum age requirement,¹² and Massachusetts has none that applies to the proposed acquisition.¹³

On consummation of the proposed transaction, Community would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, there are no states in which Community and Merchants have overlapping banking operations, such that a state deposit cap would apply. The Board has considered all other requirements under section 3(d) of the BHC Act, including Community's record of meeting the credit 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.

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.¹⁴ 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

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B). 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. For purposes of section 3(d) of the BHC Act, 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).

¹⁰ *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. A state bank's home state is the state in which the bank is chartered.

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² *See* Vt. Stat. Ann. tit. 8, §§ 1051-1064, 17101-17202.

¹³ *See* Mass. Gen. Laws ch. 167A, § 2.

¹⁴ 12 U.S.C. § 1842(c)(1).

the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁵

Community Bank and Merchants Bank do not compete directly in any banking market. Based on 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. 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, 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.

Community and Merchants are both well capitalized and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁶ The asset quality, earnings, and liquidity of both Community Bank and Merchants Bank are consistent with approval, and Community appears to have adequate resources to absorb the costs of the proposal and to complete 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 Community, Merchants, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Community, the Board's supervisory experiences with Community and Merchants 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, as well as information provided by the commenter.

Community, Merchants, and their subsidiary depository institutions are each considered to be well managed. Community has a record of successfully integrating organizations into its

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

¹⁶ As part of the proposed transaction, each share of Merchants common stock would be converted into a right to receive cash or Community common stock, or a combination of the two, based on a fixed exchange ratio. Community has the financial resources to fund the acquisition.

operations and risk-management systems after acquisitions. The directors and senior executive officers of Community have substantial knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Community's plans for implementing the proposal. Community has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Community would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Community's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Community plans to integrate Merchants' existing management and personnel in a manner that augments Community's management.¹⁷

Based on all of the facts of record, including Community's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes 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 Community and Merchants in combating 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.¹⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are currently 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 the communities to be served. In this evaluation, 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 they operate, consistent with their safe and sound operation,¹⁹ 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.²⁰

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

¹⁷ On consummation, two individuals currently serving as directors of Merchants will be added to the boards of directors of Community and Community Bank, and the current president and chief executive officer of Merchants will serve as the New England regional president of Community Bank.

¹⁸ 12 U.S.C. § 1842(c)(2).

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

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

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans, refinance home purchase loans, or home improvement loans offered to African American or Hispanic borrowers, as compared to white borrowers, by Community Bank in the Buffalo-Cheektowaga-Niagara Falls, New York, Metropolitan Statistical Area (“Buffalo/Niagara MSA”) and the Syracuse, New York, Metropolitan Statistical Area (“Syracuse MSA”) as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”)²¹ for 2015. The OCC considered the same adverse comment in connection with its review of the underlying bank merger application.²²

Business of the Involved Institutions and Response to Comment

Community Bank is a community banking franchise headquartered in upstate New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans to consumers. Community Bank’s lending portfolio includes residential mortgage loans, small business loans, commercial and industrial loans, agricultural loans, and consumer loans. In addition to traditional deposit and loan products, Community Bank also offers insurance and investment products, and trust services. Community Bank’s branches are generally located in smaller towns and cities within its geographic market areas.

Merchants Bank maintains 31 full-service offices in Vermont and one full-service office in Springfield, Massachusetts. Merchants Bank offers products and services for business and retail consumers, including residential and commercial real estate loans, commercial business loans and leases, wealth management products, and other financial services.

In response to the comment, Community asserts that all mortgage applications received by Community Bank are reviewed in accordance with the bank’s policies and procedures for underwriting and are subject to all of the bank’s policies and procedures with respect to fair lending. Community further asserts that its lending practices are based on criteria that ensure both safe and sound lending and equal access to credit by creditworthy applicants, and that the bank has comprehensive procedures and policies in place to accomplish these goals, including a “second review” process for any loan denial of a minority applicant; ongoing fair lending training for the bank’s lending personnel; an annual fair lending risk assessment; and quarterly reports from the bank’s chief compliance officer, director of internal audit, and chief risk officer to the board of directors of the bank regarding consumer protection, fair lending, CRA, and other laws and regulations.

Community argues that its lending record to minorities in the Buffalo/Niagara and Syracuse MSAs, as reflected in the 2015 HMDA data, is attributable to the low population of minorities in the communities in which its branches are located and is consistent with the

²¹ 12 U.S.C. § 2801 *et seq.*

²² The OCC considered the CRA performance evaluation of each bank involved in the transaction and, on a prospective basis, the probable effect of the proposed bank merger on the convenience and needs of the communities to be served.

fairly low level of minority mortgage loan applications that are processed by all HMDA reporting institutions in those MSAs generally. Community points to the CRA Performance Evaluation, conducted by the OCC in mid-2016, which reviewed the Buffalo/Niagara and Syracuse MSAs on a limited-scope basis and found that Community's lending performance in those areas was "not inconsistent" with Community's "good" lending performance in the assessment areas ("AAs") receiving a full-scope review. Community asserts that a comment on Community's acquisition of Oneida Financial Corp. ("Oneida") in 2015²³ raised the same issues, citing 2013 HMDA data with respect to the same areas.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁴

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.²⁵ 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 lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the company's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amount 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 amount of loans to low-, moderate-, middle-, and upper-income individuals;²⁶ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

²³ See *Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015).

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

²⁵ 12 U.S.C. § 2906.

²⁶ Examiners also consider the number and amount 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).

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.²⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Community Bank

Community Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of July 27, 2016 ("Community Bank Evaluation").²⁸ Community Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.²⁹ Examiners found that Community Bank provided a good level of community development services.

Examiners found that Community Bank's lending levels reflected excellent responsiveness to credit needs and an excellent ratio of loans originated inside its AAs to loans originated outside its AAs. Examiners also found that the bank had a good distribution of lending among census tracts and borrowers of different income levels and businesses of different sizes. The examiners highlighted that Community Bank's flexible lending activity had a positive impact on the evaluation of its lending performance in New York. Specifically, in the Buffalo/Niagara and Syracuse MSAs, which were areas of concern for the commenter, examiners conducted a limited-scope review and found that Community Bank's lending performance was not inconsistent with its performance in the AAs receiving a full-scope review.

Examiners found Community Bank to have investments that reflected good responsiveness to the credit and community development needs of the bank's AAs. Examiners noted that the bank's investments in its AAs included investments in mortgaged-backed securities comprised of mortgage loans made to LMI individuals or to finance residences located in LMI neighborhoods, as well as investments in municipal bonds that supported the revitalization and stabilization of LMI tracts, middle-income census tracts designated as distressed or underserved, or designated federal disaster areas. In their limited-scope review of the Buffalo/Niagara and Syracuse MSAs, examiners found that Community Bank's investment performance was stronger in those areas than in the AAs receiving a full-scope review.

Examiners found that the bank's delivery systems were accessible to census tracts and individuals of different income levels throughout its AAs. Examiners also found that Community Bank's hours and services offered throughout its AAs were good, and services

²⁷ Other data relevant to credit decisions could include credit histories, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners may analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

²⁸ The Community Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2012, through December 31, 2015. The evaluation period for community development loans, investments, and services was from March 12, 2012, through July 26, 2016. As of the evaluation date, 14 of the bank's 17 AAs were located within the state of New York. Consequently, the greatest weight was given to New York State in the determination of the bank's overall CRA rating.

²⁹ Examiners conducted full-scope reviews of the Northern Region Non-MSA and Southern Region Non-MSA AAs of the bank, since those areas combined represented 79 percent of the bank's total lending, 65 percent of the bank's total number of branches, and 64 percent of the bank's total deposits in the state of New York. The examiners performed limited-scope reviews of the bank's performance in the MSA portions of the bank's AAs, including the Buffalo/Niagara and Syracuse MSAs.

offered were comparable among its branch locations regardless of the income level of the census tract. Examiners further noted that the bank's performance in providing community development services was good. Examiners highlighted Community Bank's low-cost and free banking service products, including its free checking, savings, and online banking products. In their limited-scope review of the Community Bank's MSA AAs, examiners found that Community Bank's overall service test performance was weaker than in the non-MSA AAs receiving a full-scope review; however, in the Buffalo/Niagara and Syracuse MSAs, examiners found that Community Bank had branch distributions that were reasonably accessible to all portions of those AAs.

Community Bank's Activities since the Community Bank Evaluation

Community contends that, since the Community Bank Evaluation, it has made efforts to enhance its affordable housing products and programs designed to meet the needs of LMI individuals in its assessment areas. Specifically, Community asserts that it has recently expanded its U.S. Department of Agriculture ("USDA") Guaranteed Rural Housing Program coverage across its New York footprint, and it is making efforts to extend program coverage into Pennsylvania, Massachusetts, and Vermont, as well as Native American reservations. Community also asserts that it has expanded the number of loan officers it employs that are qualified to offer State of New York Mortgage Agency affordable housing program loans from five in 2015 to 39 at present. Additionally, Community represents that it is in the beginning stages of participating in lending programs through various community organizations.

Community asserts that it has expanded advertising efforts for its affordable housing programs across its footprint and specifically within the Syracuse MSA. Community represents that it has employed advertising campaigns across traditional media and with local Syracuse sports teams and transit systems in order to reach LMI and minority communities. In November 2016, Community Bank retained a mortgage loan originator whose focus is serving the credit needs in the Syracuse market, including local marketing and outreach.

Community also asserts that it has made efforts to strengthen its community development outreach, lending, and investments across its footprint. These efforts include developing relationships with and committing to make donations to LMI and minority community organizations. Community also asserts that it has made plans to continue offering the financial literacy programs that Merchants offers in Vermont after consummation of the proposal.

CRA Performance of Merchants Bank

Merchants Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of February 17, 2015 ("Merchants Bank Evaluation").³⁰The bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.

Examiners found that Merchants Bank's lending levels reflected good responsiveness to credit needs within its AAs, considering the size of the institution, loan portfolio composi-

³⁰ The Merchants Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2013, through December 31, 2014. The evaluation period for community development loans, investments, and services was from November 14, 2011, through February 17, 2015. The Merchants Bank Evaluation included a full-scope review of Merchants Bank's combined AA, including the MSA and non-MSA portions. The bank's performance in its non-MSA AA received more weight in the overall performance conclusions and ratings since it represented a larger geographic area and contained a higher lending volume than the MSA AA.

tion, and level of competition within the combined AA. Examiners found that the bank had excellent distribution of home mortgage lending and a good distribution of small business lending among the AAs' low- and moderate-income census tracts. The bank demonstrated good penetration of loans to borrowers of different income levels, particularly low- and moderate-income individuals and businesses of different sizes, especially those with gross annual revenues of \$1 million or less. Additionally, examiners noted that the bank made a relatively high level of community development loans. Overall, Merchants Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its combined AA, consistent with safe and sound business practices.

Examiners found Merchants Bank to have made investments that reflected good responsiveness to the credit and community development needs of the bank's combined AA. Examiners noted that the bank's investments included a significant level of qualified community development investments and grants. In addition to making traditional equity investments, the bank made new investments in federal New Market Tax Credits and state affordable housing tax credits, partnered with a community development financial institution and a small business investment company, and made qualified donations to organizations involved in affordable housing and community and economic development.

Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's combined AA. Examiners also found that Merchants Bank's hours were comparable to other local institutions and its hours and services did not vary in a way that inconvenienced any portion of the combined AA, particularly low- and moderate-income geographies and individuals. Examiners further noted that the bank provided a relatively high level of community development services, particularly in the area of financial literacy.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding Community Bank's CRA, consumer compliance, and fair lending records. The OCC reviewed the bank merger underlying this proposal, including the comment received by the Board.

The Board has considered the results of the most recent consumer compliance examination of Community Bank conducted by OCC examiners. The Board also has considered the results of the OCC's most recent examination of Community Bank's compliance with the Equal Credit Opportunity Act³¹ and the Fair Housing Act.³²

The Board also consulted with the OCC regarding Community Bank's compliance with conditions imposed by the OCC in connection with Community's 2015 acquisition of Oneida and the related merger of Oneida Savings Bank into Community Bank.³³ As a condition of approval of the bank merger application, the OCC required that Community Bank create a CRA AA Delineation Policy and modify its AAs in accordance with that policy.

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether Community has the experience and resources to ensure that the organization effectively implements

³¹ 15 U.S.C. § 1692 *et seq.*

³² 42 U.S.C. § 3601 *et seq.*

³³ In its order approving the Oneida acquisition, the Board conveyed its expectation that Community ensure that Community Bank comply with the conditions imposed by the OCC. *See Community Bank System, Inc.*, FRB Order No. 2015-34 (November 18, 2015).

policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. Community represents that, as a result of the proposal, existing customers of Merchants Bank would have access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas. Upon consummation of the bank merger, Community Bank would offer the former depositors of Merchants Bank its products and services. Community Bank has represented that such products and services are enhanced with respect to areas such as consumer loans, overdraft lines of credit, agricultural lending, and small business lending. Community expects that the merger would also enable it to compete more effectively with national financial institutions in its market areas and improve its ability to meet the needs of its customers and communities in its market areas. Community Bank also represents that, on balance, no significant reductions in products or services would be expected as a result of the proposal.³⁴

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 Community, 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 concludes that the convenience and needs factor is consistent with approval.

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 greater risk to the stability of the United States banking or financial system."³⁵

To assess the likely effect of a proposed transaction on the stability of the U.S. 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.³⁶ 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,

³⁴ Merchants Bank currently offers affordable housing loans through the Federal Housing Administration and the Department of Veterans Affairs. While Community Bank does not plan to continue offering such loans after consummation of the proposal, it plans to offer affordable housing loans through Fannie Mae, the USDA, and its own affordable housing program.

³⁵ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

³⁶ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

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.³⁷

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that results 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 would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁸

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁹ 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 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 U.S. 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.⁴⁰ 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

³⁷ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

³⁸ 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.

³⁹ Both Community and Merchants primarily engage in retail and commercial banking activities, and Community would continue to have a small market share following the proposed transaction.

⁴⁰ A commenter requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent 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 written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied. In addition, a 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

BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Community with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the 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 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 fifteenth 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 New York, acting under delegated authority.

By order of the Board of Governors, effective April 26, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

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.

Simmons First National Corporation Pine Bluff, Arkansas

Order Approving the Merger of Bank Holding Companies FRB Order No. 2017-13 (April 28, 2017)

Simmons First National Corporation (“Simmons”), Pine Bluff, Arkansas, a financial 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 merge with Hardeman County Investment Company, Inc. (“Hardeman”), and thereby indirectly acquire First South Bank, both of Jackson, Tennessee.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 86714 (December 1, 2016)).³ 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.

Simmons, with consolidated assets of approximately \$8.4 billion, is the 147th largest insured depository organization in the United States. Simmons controls approximately \$6.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ Simmons controls Simmons Bank, Pine Bluff, Arkansas, which operates in Arkansas, Kansas, Missouri, and Tennessee. Simmons is the 12th largest insured depository organization in Tennessee, controlling deposits of approximately \$1.9 billion in Tennessee, which represent 1.4 percent of the total deposits of insured depository institutions in that state.⁵

Hardeman, with consolidated assets of approximately \$477.4 million, is the 1463rd largest insured depository organization in the United States, controlling approximately \$396.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Hardeman controls First South Bank, which operates only in Tennessee. Hardeman is the 54th largest insured depository organization in Tennessee, controlling deposits of approximately \$379.4 million, which represent less than 0.3 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Simmons would become the 140th largest insured depository organization in the United States, with consolidated assets of approximately \$8.9 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Simmons would control consolidated deposits of approximately \$7.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Tennessee, Simmons would become the 9th largest insured depository organization, controlling deposits of approximately \$2.3 billion in Tennessee, which represent 1.7 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 CFR 262.3(b).

⁴ National asset and deposit data are as of December 31, 2016, unless otherwise noted.

⁵ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

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 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 is prohibited under state law.⁶ Under this section, the Board 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.⁷ In addition, the Board may not approve an interstate application if the bank holding company controls, or would upon consummation of the proposed transaction control, more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company would upon consummation 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.⁸

For purposes of the BHC Act, the home state of Simmons is Arkansas, and the home state of First South Bank is Tennessee.⁹ Simmons is well capitalized and well managed under applicable law, and Simmons Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹⁰ Tennessee has a three-year minimum age requirement, and First South Bank has been in existence for more than three years.¹¹

On consummation of the proposed transaction, Simmons would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Tennessee imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹² The combined organization would control approximately 1.7 percent of the total amount of deposits of insured depository institutions in Tennessee, the only state in which Simmons and Hardeman have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including Simmons’s record of meeting the credit 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.

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. 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

⁶ 12 U.S.C. § 1842(d)(1)(A).

⁷ 12 U.S.C. § 1842(d)(1)(B).

⁸ 12 U.S.C. § 1842(d)(2)(A) and (B). 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. For purposes of section 3(d) of the BHC Act, 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).

⁹ *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. A state bank’s home state is the state in which the bank is chartered.

¹⁰ 12 U.S.C. § 2901 *et seq.*

¹¹ *See* Tenn. Code Ann. § 45-2-1403(a).

¹² *See* Tenn. Code Ann. § 45-2-1404.

the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹³

Simmons and Hardeman have subsidiary depository institutions that compete directly in the Dyersburg, Tennessee, banking market (“Dyersburg market”), the Jackson, Tennessee, banking market (“Jackson market”), and the Memphis, Tennessee, banking market (“Memphis market”).¹⁴ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that Simmons would control;¹⁵ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁶ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Dyersburg, Jackson, and Memphis markets. Although the Dyersburg market would remain highly concentrated on consummation of the proposal, the increase in the HHI would not be large (91 points). Simmons would become the third largest depository organization in the market, with a market share only about 4 percentage points higher than Hardeman, which is the third largest depository organization prior to consummation of the proposal. Five competitors would remain in the market, including two depository organizations with a higher market share than Simmons. The largest depository organization in the market would control over 50 percent of market deposits.

On consummation of the proposal, the Jackson and Memphis markets would remain moderately concentrated, as measured by the HHI. Numerous competitors would remain in the Jackson and Memphis markets.¹⁷

¹³ 12 U.S.C. § 1842(c)(1).

¹⁴ The Dyersburg market is defined as Dyer and Lake counties, both of Tennessee. The Jackson market is defined as Chester, Crockett, Gibson, Haywood, Madison, and Henderson (minus District 7) counties, all of Tennessee. The Memphis market is defined as Fayette, Shelby, and Tipton counties, all of Tennessee; city of Grand Junction in Hardeman County, Tennessee; Crittenden County, Arkansas; Benton, De Soto, Marshall, Tate, and Tunica counties, all of Mississippi; the northern part of Coahoma County, Mississippi (including the cities of Friars Point, Coahoma, Lula, and Jonestown); Panola County, Mississippi (north of State Route 315 east to Sardis Lake, including the city of Sardis); and Quitman County, Mississippi (north of State Route 315, including the cities of Birdie and Sledge).

¹⁵ Deposit and market share data are as of June 30, 2016, and unless otherwise noted, 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); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁶ 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.

¹⁷ Simmons operates the 5th largest depository institution in the Dyersburg market, controlling approximately \$30.3 million in deposits, which represent approximately 4.3 percent of market deposits. Hardeman operates the 3rd largest depository institution in the same market, controlling approximately \$75.3 million in deposits, which represent approximately 10.6 percent of market deposits. On consummation of the proposed transaction,

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, including the Dyersburg, Jackson, and Memphis markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of 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 the Dyersburg, Jackson, or Memphis banking 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. In its evaluation of the 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 including capital adequacy, asset quality, 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.

Simmons and Hardeman are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.¹⁸ The asset quality, earnings, and liquidity of Simmons Bank and First South Bank are consistent with approval, and Simmons appears to have adequate resources to absorb the costs of the

Simmons would become the 3rd largest depository institution in the market, controlling deposits of approximately \$105.6 million, which represent approximately 15 percent of market deposits. The HHI for the Dyersburg market would increase by 91 points to 3934, and 5 competitors would remain in the market.

Simmons operates the 5th largest depository institution in the Jackson market, controlling approximately \$274.0 million in deposits, which represent approximately 8 percent of market deposits. Hardeman operates the 7th largest depository institution in the same market, controlling approximately \$191.5 million in deposits, which represent approximately 5 percent of market deposits. On consummation of the proposed transaction, Simmons would become the 3rd largest depository institution in the market, controlling deposits of approximately \$465.6 million, which represent approximately 13 percent of market deposits. The HHI for the Jackson market would increase by 80 points to 1066, and 23 competitors would remain in the market.

Simmons operates the 40th largest depository institution in the Memphis market, controlling approximately \$77.8 million in deposits, which represent less than 1 percent of market deposits. Hardeman operates the 53rd largest depository institution in the same market, controlling approximately \$11.5 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Simmons would become the 37th largest depository institution in the market, controlling deposits of approximately \$89.3 million, which represent less than 1 percent of market deposits. The HHI for the Memphis market would increase by less than one point, and 57 competitors would remain in the market.

¹⁸ At the time of the merger, each share of Hardeman common stock would be converted into the right to receive cash and Simmons common stock based on an exchange ratio. Simmons has the financial resources to fund the transaction.

proposal and to complete the integration of the institutions' operations. In addition, future prospects 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 Simmons, Hardeman, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Simmons; 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; as well as information provided by the commenter.

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

The Board also has considered Simmons's plans for implementing the proposal.¹⁹ Simmons has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Simmons does not anticipate making significant changes to its existing risk-management policies, procedures, and controls. These are considered acceptable from a supervisory perspective and would be implemented at the combined organization. In addition, Simmons's and Hardeman's management have the experience and resources to operate the combined organization in a safe and sound manner, and Simmons plans to integrate Hardeman's existing management and personnel in a manner that augments Simmons's management.²⁰

Based on all the facts of record, including Simmons's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and public comments on the proposal,²¹ the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Simmons and Hardeman 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.²² In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit

¹⁹ Simmons plans to operate First South Bank as a separate entity for an interim period following consummation of the holding company merger. After the interim period, Simmons anticipates merging First South Bank with and into Simmons Bank.

²⁰ On consummation, four individuals currently serving as senior management officials at Hardeman or First South Bank will serve as senior management officials at the Simmons banking organization. These individuals include Hardeman's current president and chief executive officer, who will be retained as the Jackson community chairman of Simmons Bank.

²¹ A commenter questioned how Simmons plans to reduce Hardeman's annual non-interest expenses upon consummation of the proposal. As explained above, the Board considered Simmons's plans for operating the combined organization upon consummation and determined that those plans would not present financial, managerial, or safety and soundness concerns.

²² 12 U.S.C. § 1842(c)(2).

needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, 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 they operate, consistent with their safe and sound operation,²³ 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.²⁴

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 comments received on the proposal. The Board also may consider the institution's business model, its 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 Simmons Bank and First South Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by Simmons, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

In this case, the Board received comments from a commenter objecting to the proposal on the basis of alleged disparities in the rates at which Simmons denied applications for conventional home purchase loans by African Americans, as compared to whites, in the Little Rock, Arkansas, Metropolitan Statistical Area ("Little Rock MSA") and the Memphis, Tennessee-Mississippi-Arkansas, Metropolitan Statistical Area ("Memphis MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2015. In addition, the commenter alleged that Simmons's HMDA reporting record is not credible and does not accurately reflect its loan denial rates.²⁵

Businesses of the Involved Institutions and Response to Comments

Simmons Bank offers a broad range of retail and commercial banking products to consumers and businesses. Through its network of branches across Arkansas, Kansas, Missouri, and Tennessee, the bank offers a variety of banking products including commercial, residential, agricultural, and consumer loans, personal checking and savings accounts, business checking and savings accounts, money market accounts, cash management products and services, credit cards, merchant services, and wealth management services.

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

²⁵ The commenter also cited an anonymous customer complaint posted to a public online forum in 2015 that alleged problems with Simmons Bank's overdraft and return policies and expressed concern over the fees that were allegedly charged by the bank on the customer's account. As part of its review of this proposal, the Board considered information collected by the Federal Reserve Bank of St. Louis regarding the customer complaint and Simmons Bank's overdraft and return fee programs.

First South Bank offers a more limited range of retail and commercial products through 10 branches in Tennessee, including deposit and loan products, debit cards, mobile phone banking, bill pay, and internet banking.

In response to the comments, Simmons represents that its HMDA and CRA data integrity are regularly verified through internal auditing reviews and regulatory examinations, and that regulatory compliance is an integral component of Simmons Bank's operating plan. Simmons also represents that an analysis of Simmons Bank's geographic and demographic lending activity is performed at least once annually and Simmons Bank retains appropriate documentation relating to its CRA program.

In addition, Simmons argues that the 2015 HMDA data referenced by the commenter does not fairly represent Simmons Bank's lending activities in the Little Rock MSA and the Memphis MSA, and that the bank's lending is fully compliant with all applicable CRA and fair lending requirements. Simmons asserts that the denial rates referenced by the commenter reflect determinations based on an applicant's credit history, debt-to-income ratios, insufficient collateral, and other nondiscriminatory factors. Simmons asserts that the bank continues to enhance its CRA program by increasing its marketing efforts toward LMI borrowers and developing more lending products, such as the Affordable Advantage Mortgage program (the "Mortgage Program"). The Mortgage Program, designed by Simmons Bank in 2015, has flexible qualifying and underwriting guidelines that target LMI census tracts and LMI borrowers, including those in the Little Rock and Memphis MSAs.

Simmons states that, in the Little Rock MSA, it has significantly increased its conventional home purchase lending to African Americans from 2015 to 2016, as reflected in Simmons Bank's 2016 HMDA data. Simmons represents that the number of conventional home purchase loan applications received and originated from African Americans during the 2016 HMDA review period increased substantially, as compared to the prior year. Simmons attributes these increases to the Mortgage Program, which it began offering in certain markets in 2015. Simmons represents that the Mortgage Program features flexible qualifying and underwriting guidelines and is specifically designed to increase the bank's home purchase and home refinance lending to LMI borrowers and communities.

In the Memphis MSA, Simmons asserts that disparities in Simmons Bank's lending record to African Americans, as reflected in 2015 HMDA data, are attributable to the bank entering the MSA in 2015 through an acquisition. As a result, Simmons asserts that it had a limited presence in the MSA during the 2015 HMDA review period and received few conventional home purchase loan applications from African Americans. However, Simmons represents that it has since taken steps to increase its lending to LMI and minority borrowers by extending the availability of its Mortgage Program to the Memphis MSA.

As part of Simmons's efforts to continue to enhance its CRA program, Simmons represents that it has established lending benchmarks for its full-scope and limited-scope markets, including community development lending benchmarks, and diversified investment goals and community development service goals at the branch level. To assist in the marketing of its products to LMI borrowers, Simmons represents that it has employed CRA mortgage lenders in the Little Rock and Memphis MSAs.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the applicant's response to the comments. In particular, the Board evaluates an institution's

performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁶ In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of St. Louis (“Reserve Bank”), the FDIC, and the OCC.

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.²⁷ 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 lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s home mortgage, small business, small farm, and community development 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 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 assessment areas; (2) the geographic distribution of the institution’s lending in its assessment areas 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;²⁸ (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 credit needs of LMI individuals and geographies.

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.²⁹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

²⁶ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁷ 12 U.S.C. § 2906.

²⁸ 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).

²⁹ Other data 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.

CRA Performance of Simmons Bank

Simmons Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of January 2, 2013 (“Simmons Bank Evaluation”).³⁰ The bank received “Low Satisfactory” ratings for both the Lending Test and Investment Test and a “High Satisfactory” rating for the Service Test.³¹

Examiners found that Simmons Bank’s overall lending levels reflected adequate responsiveness to credit needs in its assessment areas. According to examiners, the bank originated a substantial majority of loans within its assessment areas, and the distribution of its loans across income levels and businesses of different sizes was adequate. In particular, examiners found that the bank’s overall distribution of home mortgage loans to geographies of different income levels was adequate.

In Arkansas, Simmons Bank’s performance under the Lending Test was rated “Low Satisfactory.” Examiners found that the bank’s overall geographic distribution of home mortgage loans was adequate, and its overall geographic distribution of small loans to businesses and farms was good. The bank was found to offer flexible loan programs, including for home mortgage and farm loans. In the Little Rock MSA, an area of concern for the commenter, the bank’s lending volume was considered adequate.

With respect to the Investment Test, examiners found that Simmons Bank had an overall adequate level of qualified investments based on the investment opportunities and dollar volume of investments made in its assessment areas. In Arkansas, the bank received a “Low Satisfactory” rating for the Investment Test. In the Little Rock MSA, examiners concluded that the bank’s level of qualified investments was poor.

As noted, Simmons Bank received a “High Satisfactory” rating for the Service Test. Examiners found the bank’s delivery systems to be accessible to all sections of its assessment areas, including to individuals of different income levels. Examiners noted that, overall, the bank provided a good level of community development services in the areas in which the bank maintained an ongoing presence, including by providing technical assistance to programs that support affordable housing, small businesses, and economic development in LMI geographies.

In Arkansas, Simmons Bank received a “High Satisfactory” rating for the Service Test. Examiners noted that the bank’s retail branch distribution in Arkansas was good and that the bank provided a good level of community development services. In the Little Rock MSA, examiners found the bank’s branch delivery systems to be adequate and reasonably accessible to geographies and individuals of different income levels.

Simmons Bank’s Efforts since the Simmons Bank Evaluation

Simmons represents that, since the Simmons Bank Evaluation, Simmons Bank has made significant efforts to enhance its ability to serve the credit needs of the communities it

³⁰ The Simmons Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to the HMDA, and small loans made to businesses and farms reported under CRA data-collection requirements, for 2009 through 2011. The evaluation period for community development lending, investments, and services was September 30, 2008, through January 2, 2013.

³¹ The Simmons Bank Evaluation included full-scope evaluations of the Fort Smith, Arkansas-Oklahoma Multistate MSA; the Little Rock-North Little Rock, Arkansas MSA; the Pine Bluff, Arkansas MSA; non-Metropolitan Arkansas (comprised of Searcy, Stone, and Van Buren counties); the Kansas City, Kansas-Missouri Multistate MSA; the Wichita, Kansas MSA; and the Springfield, Missouri MSA. Limited-scope evaluations were performed in Fulton and Sharp counties, both of Arkansas, and Saline County of Kansas.

serves. These efforts include hiring a full-time, experienced, CRA officer, completing two self-assessment examinations, offering a wider variety of Small Business Administration loans, and enhancing its CRA performance monitoring compliance systems. In addition, Simmons notes that it created a Community Development Department and established a CRA Strategic Plan in 2014 to better address its expanding CRA obligations.

The CRA Strategic Plan applies to all markets in which Simmons Bank operates, including the Little Rock and Memphis MSAs. Simmons represents that it reviews and revises its CRA Strategic Plan annually to reflect the bank's expanding line of financial products as well as the increased number of deposit and loan products being offered by Simmons within its markets. For example, Simmons notes that in 2015 it created internal CRA performance benchmarks and in 2016 it enhanced the bank's CRA goals by establishing specific lending benchmarks, community development lending benchmarks, a diversified investment goal, and community development services goals at the branch level.

In addition, Simmons represents that it has established community advisory committees across Arkansas, Tennessee, and Missouri. These committees are comprised of LMI service providers that represent a variety of groups, including public housing authorities and non-profit organizations. Simmons further represents that these advisory committees provide it with an additional platform to identify ways to serve the communities in which Simmons serves.

In the Little Rock MSA, Simmons represents that it has expanded its CRA activities as part of broader improvements to its CRA program. Simmons further represents that its employees actively support a variety of community development initiatives in the Little Rock MSA, including through efforts to promote affordable housing, community economic development, and financial literacy. Furthermore, Simmons notes that, in 2015 and 2016, Simmons Bank provided several grants to support affordable housing initiatives in the Little Rock MSA. With respect to the Memphis MSA, Simmons notes that it entered the market in 2015 through an acquisition and first developed CRA performance goals for the market in 2016. These initiatives include developing an affordable home-improvement mortgage product that will be marketed to communities in Memphis and providing financial literacy training to small businesses. Simmons states that it expects to continue its existing CRA activities in the Little Rock and Memphis MSAs after consummation of the proposal. Simmons notes that it continues to evaluate its marketing activities in an effort to identify more effective ways to reach LMI individuals and communities.

CRA Performance of First South Bank

First South Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 12, 2016 ("First South Bank Evaluation"),³² with ratings of "Satisfactory" for the Lending Test and "Outstanding" for the Community Development Test.³³

Examiners concluded that First South Bank exhibited a satisfactory overall record with respect to the Lending Test. Examiners noted that a majority of the bank's small business

³² The First South Bank Evaluation was conducted using the Interagency Intermediate Small Institution Examination Procedures. Examiners reviewed small business loans from the 2015 calendar year. Examiners reviewed home mortgage loans reported pursuant to HMDA data-collection requirements (geographic distribution and borrower distribution) from 2014 through June 30, 2016. The evaluation period for community development loans, investments, and services was from March 4, 2014, through September 12, 2016.

³³ The First South Bank Evaluation included a full-scope evaluation of the Madison County assessment area in the Jackson, Tennessee MSA, and a limited-scope evaluation of the Tennessee Non-MSA (consisting of Dyer, Hardeman, and Haywood counties).

and home mortgage loans, by number and dollar volume, were made in its assessment areas. Examiners found that the distribution of the bank's borrowers reflected reasonable penetration among individuals of different income levels and businesses of different sizes, and the geographic distribution of its loans reflected reasonable dispersion for the bank as a whole.

In addition, examiners concluded that First South Bank demonstrated excellent responsiveness to community development needs in its assessment areas through a combination of community development loans, qualified investments, and community development services. Examiners found that the bank's community development loans demonstrated adequate responsiveness to the community development needs of its assessment areas. In addition, examiners found that the bank demonstrated an excellent record of making qualified investments, as reflected in the relative volume of its investments and the responsiveness of those investments in meeting community development needs. Examiners also found that the bank provided an excellent level of community development services relative to its resources, including to community organizations that primarily provide services to LMI individuals. Examiners noted that First South Bank maintained banking hours and services that are typical for the industry and areas that it serves. In addition, the bank offered alternative delivery systems such as mobile and online banking.

Additional Supervisory Views

In 2016, Simmons Bank changed from a national bank to a state member bank, resulting in the Reserve Bank becoming the bank's primary supervisor. As part of Simmons Bank's conversion, the Reserve Bank carried out a pre-membership examination. Since Simmons Bank became a state member bank, the Reserve Bank has performed targeted exams of the bank's consumer compliance program. The Board has considered the results of these examinations as well as Simmons Bank's record of complying with fair lending and other consumer protection laws.

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. Simmons represents that it plans to continue its current offering of products and services after consummation of the proposal. In addition, Simmons represents that it plans to operate First South Bank as a separate entity for an interim period of time prior to scheduling the merger of First South Bank with and into Simmons Bank. During the interim period, Simmons anticipates that both banks would continue to offer their legacy products and services. Simmons notes that customers of First South Bank could be referred to branches of Simmons Bank for access to Simmons's broader offering of products and services. According to Simmons, such referrals could occur upon a customer's request or if a customer is identified as a candidate for products and services only offered by Simmons.

Upon completion of the bank merger and systems conversion, Simmons represents that its products and services would become available to customers of First South Bank at that bank's former locations. Simmons represents that many of these products and services have more flexible features than those currently offered by First South Bank. These include credit card products, signature guarantees, and Simmons Bank's "Positive Pay" anti-fraud account reconciliation service. In addition, Simmons asserts that customers of First South Bank would benefit from a more expansive branch and ATM network located across four states.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Simmons, the public comments 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 concludes that the convenience and needs factor is consistent with approval.

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 a proposal's risk "to the stability of the United States banking or financial system."³⁴

To assess the likely effect of a proposed transaction on the stability of the U.S. 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.³⁵ 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.³⁶

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that results 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 would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁷

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of retail commercial

³⁴ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

³⁵ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁶ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁷ 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.

banking activities.³⁸ 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 U.S. 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 proposal should be, and hereby is, approved.³⁹ 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. Approval of this proposal is specifically conditioned on compliance by Simmons with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the 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 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 fifteenth 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 by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective April 28, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

Ann E. Misback
Secretary of the Board

³⁸ In each of the activities in which it engages, Simmons has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

³⁹ The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent 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 written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Sunflower Reincorporation Sub, Inc. Salina, Kansas

Order Approving the Formation of a Bank Holding Company, the Acquisition of a Bank Holding Company, and Determination on a Financial Holding Company Election
FRB Order No. 2017-14
(June 2, 2017)

Sunflower Reincorporation Sub, Inc. (“FirstSun”),¹ a wholly owned subsidiary of Sunflower Financial, Inc. (“Sunflower”), a financial holding company, has requested the Board’s approval under section 3 of the Bank Holding Company Act of 1956 (“BHC Act”)² to become a bank holding company by merging with Sunflower and thereby indirectly acquiring Sunflower Bank, National Association (“Sunflower Bank”), all of Salina, Kansas.³

In addition, FirstSun has requested the Board’s approval under section 3 of the BHC Act to acquire Strategic Growth Bank Incorporated and Strategic Growth Bancorp Incorporated (collectively, “Strategic”), both financial holding companies of El Paso, Texas, and thereby indirectly acquire Capital Bank, SSB (“Capital Bank”), El Paso, Texas, and First National Bank of Santa Fe (“First National Bank”), Albuquerque, New Mexico. Following the proposed holding company mergers, Capital Bank and First National Bank would be merged into Sunflower Bank.⁴ FirstSun also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 72055 (October 19, 2016)) in accordance with the Board’s rules.⁶ 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.

Sunflower, with consolidated assets of approximately \$1.9 billion, is the 411th largest insured depository organization in the United States. Sunflower controls approximately \$1.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Sunflower controls Sunflower Bank, which operates in Colorado, Kansas, and Missouri. Sunflower Bank is the 32nd largest insured depository institution in Colorado, controlling deposits of approximately \$349.7 million, which represent 0.29 percent of the total deposits of insured depository institutions in that state.⁸

Strategic, with consolidated assets of approximately \$2.2 billion, is the 374th largest insured depository organization in the United States. Strategic controls approximately \$1.7

¹ The application was submitted, and notice of the proposal published, under the name Sunflower Reincorporation Sub, Inc. Subsequently, the name of this entity was changed to FirstSun Capital Bancorp.

² 12 U.S.C. § 1842.

³ FirstSun would survive the merger.

⁴ The merger of Capital Bank and First National Bank with and into Sunflower Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the merger on November 10, 2016.

⁵ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁶ 12 CFR 262.3(b).

⁷ National asset and deposit data are as of December 31, 2016, unless otherwise noted.

⁸ State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Strategic controls Capital Bank, which operates in Texas, and First National Bank, which operates in Colorado and New Mexico. First National Bank is the 31st largest insured depository institution in Colorado, controlling deposits of approximately \$356.6 million, which represent 0.29 percent of the total deposits in that state.

On consummation of this proposal, FirstSun would become the 240th largest depository organization in the United States, with consolidated assets of approximately \$4.0 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. FirstSun would control consolidated deposits of approximately \$3.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Colorado, FirstSun would become the 25th largest depository institution, controlling deposits of approximately \$706.2 million, which represent 0.58 percent of the total deposits of insured depository institutions in that state.

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 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 is prohibited under state law.⁹ Under this section, the Board 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 less than the state statutory minimum period of time or five years.¹⁰ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, the bank holding company upon consummation would control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.¹¹

For purposes of the BHC Act, the home state of FirstSun is Kansas, the home state of Capital Bank is Texas, and the home state of First National Bank is New Mexico.¹² Upon consummation of the transactions, FirstSun would be well capitalized and well managed under applicable law, and Sunflower Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").¹³ There are no minimum age requirements under the laws of Texas or New Mexico that apply to FirstSun's acquisition of Strategic's subsidiary banks.¹⁴

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1842(d)(1)(B).

¹¹ 12 U.S.C. § 1842(d)(2)(A) and (B). 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. For purposes of section 3(d) of the BHC Act, 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).

¹² *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. A national bank's home state is the state in which the main office of the bank is located.

¹³ 12 U.S.C. § 2901 *et seq.*

¹⁴ *See* Tex. Fin. Code Ann. § 203.003; N.M. Stat. Ann. § 58-26-4.

On consummation of the proposed transactions, FirstSun would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in Colorado, the only state in which FirstSun and Strategic have overlapping banking operations. The Board has considered all other requirements applicable under section 3(d) of the BHC Act, including Sunflower'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.

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.¹⁵ 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 community to be served.¹⁶

Sunflower and Strategic have subsidiary depository institutions that compete directly in the Denver-Boulder, Colorado, banking market ("Denver market").¹⁷ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that FirstSun would control;¹⁸ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");¹⁹ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Denver market. On consummation of the proposal, the Denver market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.²⁰

¹⁵ 12 U.S.C. § 1842(c)(1).

¹⁶ 12 U.S.C. § 1842(c)(1)(B).

¹⁷ The Denver market is defined as the Denver metropolitan area in Boulder County, portions of Adams and Arapahoe counties, and the towns of Frederick and Keenesburg in Weld County, all in Colorado.

¹⁸ Local deposit and market share data are as of June 30, 2016, 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); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁹ 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.

²⁰ Sunflower operates the 48th largest depository institution in the Denver market, controlling approximately \$56.6 million in deposits, which represent 0.07 percent of market deposits. Strategic operates the 23rd largest

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.

Based on all of 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 the Denver market 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.²¹ 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, 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 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.

Sunflower and Strategic are both well capitalized, and FirstSun would become so on consummation of the proposed transactions. The proposed transactions are structured primarily as stock exchanges.²² The asset quality, earnings, and liquidity of Sunflower Bank, Capital Bank, and First National Bank are consistent with approval, and FirstSun appears to have adequate resources to absorb the costs of the proposals and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization, as well as public comments received on the proposals. In this case, the Board received two comments objecting to the proposals based on concerns regarding the management of Sunflower and Strategic and the future manage-

depository institution in the same market, controlling deposits of approximately \$333.1 million, which represent about 0.40 percent of market deposits. On consummation of the proposed transaction, FirstSun would become the 23rd largest depository organization in the market, controlling deposits of approximately \$389.7 million, which represent approximately 0.47 percent of market deposits. The HHI for the Denver market would increase by less than 1 point and remain at 1295, and 75 competitors would remain in the market.

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

²² To effect the transactions, Sunflower would first merge with and into FirstSun, with shares of Sunflower primarily being converted into the right to receive shares of FirstSun, based on an exchange ratio. Immediately following Sunflower's merger with FirstSun, Strategic would merge with and into FirstSun. To effect this transaction, shares of Strategic will primarily be converted into the right to receive shares of FirstSun, based on an exchange ratio. Because the shares issued as part of the mergers will not be registered under the Securities Act of 1933, shareholders who are not accredited investors, as defined in section 4(a)(2) of the Act and Rule 506 of the Securities Exchange Commission's Regulation D, would receive cash rather than stock. FirstSun has the financial resources to fund the transaction.

ment of FirstSun. The commenters primarily focused on the roles and managerial abilities of two individuals, both of whom would be members of the future management of FirstSun.

In particular, commenters expressed concerns regarding an individual who currently serves as a consultant to Sunflower, alleging that this individual has exceeded their role as a consultant and has been responsible for major decisions at Sunflower. Based on this individual's experience with other financial institutions, commenters also expressed concerns regarding this individual's managerial abilities. Commenters also expressed concerns regarding the managerial abilities and character of a current executive officer of Sunflower. One commenter also expressed concern that the management of Sunflower has taken control of Strategic prior to the Board's approval.

In considering the managerial resources of the institutions involved, the Board considered information provided by commenters, the relevant institutions, and the individuals. Sunflower and Strategic represent that the officers and directors of Strategic have continued to carry out their duties at Strategic during the pendency of the application without control by Sunflower. The management of Sunflower also asserts that its management, and not the consultant, has retained all authority to make decisions at Sunflower, including the authority to commit Sunflower to any transactions and to approve risk management limits and controls. Sunflower represents that the consultant's role is confined to supporting operational and strategic planning at Sunflower.

In evaluating the managerial resources and character of the proposed management of FirstSun, the Board also has taken account of confidential supervisory information regarding Sunflower and Strategic and the individuals, as well as other regulators' supervisory experiences with the principals of Sunflower and Strategic. The Board also has considered the institutions' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws. In particular, the Board has reviewed the examination records of Sunflower, Strategic, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered both its supervisory experiences with the individuals referenced by the commenters, as well as the supervisory experiences of other relevant bank supervisory agencies with these individuals.

FirstSun's directors and officers would have the experience and resources to ensure that the combined organization operates in a safe and sound manner. Sunflower's directors and senior executive officers, who would fill the majority of the director and officer positions at FirstSun, have substantial knowledge of and experience in the banking and financial services sectors. Strategic's directors and senior officers, who would fill the remaining director and officer positions at First Sun, also have substantial knowledge of and experience in the banking and financial services sectors. Further, FirstSun's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered FirstSun's plans for implementing the proposal. FirstSun has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. FirstSun represents that, following consummation of the anticipated bank mergers, it would implement its risk-management policies, procedures, and controls at the combined organization. These policies, procedures, and controls are considered satisfactory from a supervisory perspective.

Based on all the facts of record, including the supervisory records of Sunflower, Strategic, and their subsidiary banks, managerial and operational resources, and plans for oper-

ating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Sunflower and Strategic 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.²³ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, 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 the communities to be served. In this evaluation, 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 they operate, consistent with their safe and sound operation,²⁴ 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.²⁵

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 comments received on the proposal. The Board also may consider the institution's business model, its 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 Sunflower Bank, Capital Bank, and First National Bank; the consumer compliance records of the involved banks; confidential supervisory information; and information provided by FirstSun.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.²⁶ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.²⁷ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications

²³ 12 U.S.C. § 1842(c)(2).

²⁴ 12 U.S.C. § 2901(b).

²⁵ 12 U.S.C. § 2903.

²⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁷ 12 U.S.C. § 2906.

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.²⁸

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 Home Mortgage Disclosure Act ("HMDA"),²⁹ 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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas 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;³⁰ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 Home Mortgage Disclosure Act ("HMDA"),³¹ 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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas 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;³² (4) the institution's community development lending, including the number and amount of community development loans and their

²⁸ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁹ 12 U.S.C. § 2801 *et seq.*

³⁰ Examiners also consider the number and amount 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).

³¹ 12 U.S.C. § 2801 *et seq.*

³² Examiners also consider the number and amount 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).

complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Sunflower Bank

Sunflower Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 31, 2014 ("Sunflower Bank Evaluation").³³ The bank received a "High Satisfactory" rating for the Service Test, a "Low Satisfactory" rating for the Lending Test, and a "Needs to Improve" for the Investment Test.

Examiners found that Sunflower Bank's overall home mortgage lending activity was good and that the borrower distribution of these loans was adequate. According to examiners, the bank's level and borrower distribution of small loans to farms was good, but the geographic distribution of these loans was poor. Examiners further noted that the bank's level of small loans to businesses was adequate and that the geographic distribution of these loans was excellent. Examiners observed that the borrower distribution of small loans to businesses was good. Although examiners observed an overall poor level of qualified investments and donations, examiners noted that the bank's delivery systems provided good access to LMI geographies and individuals. Examiners also noted that, overall, the bank's level of community development services was adequate.

Sunflower Bank was assigned an overall rating of "Satisfactory" in the state of Kansas, the area weighted most heavily by examiners due to Sunflower Bank's level of activity in that state. In Kansas, Sunflower Bank's performance on the Lending Test was rated "Satisfactory." Examiners found that the bank's overall lending activity in the bank's non-metropolitan assessment area was excellent and that the overall borrower distribution was adequate. On the Investment Test, Sunflower Bank was rated "Needs to Improve" based on the bank's level of qualified investments and donations, while on the Service Test, examiners rated the bank's performance as "High Satisfactory." In the bank's non-metropolitan assessment area, examiners noted that the bank's service delivery systems were readily accessible to geographies and individuals of different income levels and that the bank provided a good level of community development services.

CRA Performance of First National Bank

First National Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 31, 2016 ("First National Bank Evaluation").³⁴ The bank received "High Satisfactory" ratings for both the Service Test and Investment Test and a "Low Satisfactory" rating for the Lending Test.

³³ The Sunflower Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans, and small business and small farm loans, for the period between January 1, 2010, and December 31, 2012. The evaluation period for community development lending, investments, and services was July 20, 2011, through March 31, 2014.

The Sunflower Bank Evaluation included full-scope evaluations of the bank's non-metropolitan assessment areas in Kansas, Missouri, and Colorado. In each of these states, data for non-metropolitan areas was aggregated to form one non-metropolitan assessment area for the purpose of analysis in that state. The Sunflower Bank Evaluation also included full-scope evaluations of the Pueblo, Colorado, Metropolitan Statistical Area ("MSA"). Limited-scope evaluations were performed in four metropolitan assessment areas in Kansas: Wichita, Manhattan, Lawrence; and Topeka.

³⁴ The First National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, for the period between January 1, 2014, and December 31, 2015. The evaluation period for community development lending, investments, and services was March 31, 2013, through March 31, 2016.

The First National Bank Evaluation included full-scope reviews of the bank's Albuquerque (Bernalillo County), Santa Fe MSA and Denver-Aurora-Lakewood MSA assessment areas. Limited-scope reviews were

Examiners found that the First National Bank originated a substantial majority of loans inside its assessment areas. Examiners also found that the bank made a relatively high level of community development loans in the states of New Mexico and Colorado, which had a positive impact on the bank's CRA performance in those states. According to examiners, the volume of the bank's qualified investments was significant relative to the investment opportunities and identified needs of the bank's assessment areas. Examiners noted that the borrower distribution of HMDA loans in the bank's Albuquerque and Santa Fe assessment areas was poor. However, examiners found that First National Bank's branches were accessible to geographies and individuals of all income levels and that the bank provided a relatively high level of community development services.

Examiners weighted the First National Bank's performance in the Santa Fe assessment area most heavily, given the level of the bank's activities in that area. In the Santa Fe assessment area, examiners considered First National Bank's community development lending to be excellent. In addition, examiners considered the bank's branches in this area to be reasonably accessible to geographies and individuals of all incomes. Although examiners found the bank's lending activity in the Santa Fe assessment area to be poor, examiners also noted that the bank's poor record of lending activity throughout New Mexico was mitigated by the economic conditions and the bank's strategic initiatives during the evaluation period.

CRA Performance of Capital Bank

Capital Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of April 4, 2011 ("Capital Bank Evaluation").³⁵

Examiners determined that Capital Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition. Examiners further noted that, despite economic conditions in the area, Capital Bank continued to meet the credit needs of its community by extending loans. According to examiners, the bank exhibited an excellent record of concentrating its loans inside its assessment area, particularly with respect to small business and residential mortgage loans. Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout the bank's assessment area. In particular, examiners considered the bank's records of small business and home mortgage lending in LMI geographies to be reasonable. Likewise, examiners found that borrower distribution of small business and residential mortgage loans reflected a reasonable penetration to borrowers of different income levels. Further, examiners noted that Capital Bank did not receive any CRA complaints during the assessment period.

conducted of the bank's Las Cruces MSA, Boulder MSA, Fort Collins MSA, and of its Los Alamos County and Lincoln County assessment areas.

³⁵ The Capital Bank Evaluation was conducted using Small Institution CRA Examination Procedures, which evaluate (1) the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) the percentage of loans and other lending-related activities located in the bank's assessment areas; (3) the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; (4) the geographic distribution of the bank's loans; and (5) the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. *See, e.g.*, 12 CFR 228.26(b). The Capital Bank Evaluation reviewed the bank's CRA activities for the period between July 17, 2006, and April 4, 2011. In particular, examiners also considered a sample of small business loans originated during the period between May 22, 2008, and January 27, 2011, as well as home mortgage loans recorded on the bank's 2009 and 2010 HMDA Loan Application Registers. The Capital Bank Evaluation included a full-scope review of the bank's El Paso MSA (El Paso County) assessment area.

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. FirstSun represents that upon consummation of the proposals, existing customers of Capital Bank and First National Bank would have access to a more expansive line of products and services. FirstSun also represents that the acquisition would make available expanded resources to the communities currently served by Sunflower Bank, Capital Bank, and First National Bank. FirstSun also represents that the proposed transactions would expand the retail outlets available to customers of all three institutions.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with consumer protection laws, confidential supervisory information, information provided by FirstSun, the public comments 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 concludes that the convenience and needs factor is consistent with approval.

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 a proposal's risk "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 U.S. 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 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

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 U.S. financial system.

³⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

these size thresholds, absent evidence that the transaction 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 U.S. banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. The acquirer would be and the targets are predominately engaged in retail commercial banking activities.⁴⁰ 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 be so interconnected with other firms or the markets that it would pose 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 U.S. 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.

Financial Holding Company Election

As noted, FirstSun has elected to become a financial holding company in connection with the proposals. FirstSun has certified that, upon consummation of the proposals, FirstSun and the depository institutions it would control would be well capitalized and well managed, and has provided all the information required under the Board's Regulation Y.⁴¹ Based on all the facts of record, the Board determines that FirstSun's election will become effective upon consummation of the proposal if, on that date, FirstSun is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have CRA ratings of at least "Satisfactory."

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 FirstSun with all of the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the 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 Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

³⁹ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding these presumptions, the Board has the authority to review the financial stability implications of any proposal. For example, any acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

⁴⁰ Sunflower primarily offers commercial and retail banking services, mortgage banking services, commercial real estate lending, investment advisory and management services, trust services and operations, wealth management services, and treasury services. Strategic also offers commercial and retail banking services, as well as treasury management services, private banking, mortgage banking services, and wealth management services. In each of these activities, the involved institutions have, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

⁴¹ See Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1).

The proposal may not be consummated before the fifteenth 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 Kansas City, acting under delegated authority.

By order of the Board of Governors, effective June 2, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

Canadian Imperial Bank of Commerce
Toronto, Canada

CIBC Holdco Inc.
New York, New York

Order Approving the Formation of a Bank Holding Company and the Acquisition of a Bank Holding Company
FRB Order No. 2017-15
(June 7, 2017)

Canadian Imperial Bank of Commerce (“CIBC”), Toronto, Canada, a foreign banking organization that has elected to be treated as a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ and its subsidiary, CIBC Holdco Inc. (“CIBC Holdco,” and together with CIBC, “Applicants”), New York, New York, have requested the Board’s approval under section 3 of the BHC Act² to acquire PrivateBancorp, Inc. (“PrivateBancorp”), and thereby indirectly acquire The PrivateBank and Trust Company (“PrivateBank”), both of Chicago, Illinois. As part of the proposal, CIBC Holdco would become a bank holding company.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 60355 (September 1, 2016)).³ 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.

CIBC, with consolidated assets of approximately \$381 billion, is the fifth largest insured depository organization in Canada.⁴ CIBC provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and it operates in North America (including the United States), Europe, and Asia. In the United States, CIBC also operates branches in New York and Illinois and representative offices in Texas and California. CIBC does not control a bank within the United States.⁵ CIBC is a qualifying foreign banking organization and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under the Board’s Regulation K.⁶

PrivateBancorp, with consolidated assets of approximately \$20.1 billion, is the 82nd largest insured depository organization in the United States, controlling approximately \$16.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ PrivateBancorp controls PrivateBank, which operates in Illinois, Michigan, Missouri, and Wisconsin.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 CFR 262.3(b).

⁴ Asset and ranking data for CIBC on a consolidated basis are as of April 30, 2016, and are based on the exchange rate as of that date.

⁵ CIBC also controls Atlantic Trust Company, National Association, Atlanta, Georgia, a nondepository trust company that is not a “bank” for purposes of the BHC Act. *See* 12 U.S.C. § 1841(c)(2)(D).

⁶ 12 CFR 211.23(a).

⁷ U.S. asset and deposit data are as of December 31, 2016, unless otherwise noted.

On consummation of this proposal, CIBC's U.S. operations would have assets that represent less than 1 percent of the total assets of insured depository institutions in the United States.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.⁹ 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 Board finds that 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 community to be served.¹⁰

CIBC does not currently control a commercial bank in the United States, and CIBC and PrivateBancorp do not directly compete in any retail banking market. The Department of Justice 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.

Based on all of 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.¹¹ 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 public and supervisory information regarding capital adequacy, asset quality, 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. The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), the agency with primary

⁸ Under the Board's Regulation YY, a foreign banking organization with U.S. non-branch assets of \$50 billion or more is required to establish a U.S. intermediate holding company ("IHC"). 12 CFR 252.153. On consummation of this proposal, CIBC would have less than \$50 billion in U.S. non-branch assets and therefore would not be required to establish a U.S. IHC.

⁹ 12 U.S.C. § 1842(c)(1)(A).

¹⁰ 12 U.S.C. § 1842(c)(1)(B).

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

responsibility for the supervision and regulation of federally registered Canadian banking organizations, including CIBC.

The capital levels of CIBC exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.¹² The proposed transaction is a merger that is structured as a cash and share exchange.¹³ The asset quality, earnings, and liquidity of both CIBC and PrivateBancorp are consistent with approval, and CIBC appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects 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 CIBC's U.S. operations, PrivateBancorp, and PrivateBank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CIBC, 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, as well as information provided by commenters. As noted, the Board also has consulted with the OSFI.

CIBC, PrivateBancorp, and PrivateBank are each considered to be well managed. CIBC's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and its risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered CIBC's plans for implementing the proposal. CIBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. CIBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, the management of CIBC and PrivateBancorp have the experience and resources to operate the combined organization in a safe and sound manner, and CIBC plans to integrate PrivateBancorp's existing management and personnel in a manner that augments CIBC's management.¹⁴

Section 3 of the BHC Act also prohibits the Board from approving a proposal unless the applicant provides adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁵ The Board has

¹² The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 to total assets of CIBC and CIBC Holdco.

¹³ Applicants would effect the acquisition by merging PrivateBancorp with and into CIBC Holdco (with CIBC Holdco as the survivor). At the time of the merger, each share of PrivateBancorp common stock would be converted into a right to receive CIBC common stock and cash, based on an exchange ratio. CIBC has the financial resources to fund the cash portion of the exchange.

¹⁴ On consummation, CIBC will add one director, nominated by PrivateBancorp, to its board. The board of CIBC Holdco will be composed of nine directors, of which three independent directors and one nonindependent director will be selected by PrivateBancorp and the other five directors selected by CIBC. Similarly, the board of PrivateBank will be composed of nine directors, of which three independent directors and one nonindependent director will be selected by PrivateBancorp and the other five directors selected by CIBC. In addition, certain key executives of PrivateBancorp and PrivateBank will be employed by CIBC and CIBC Holdco after consummation of the proposal.

¹⁵ 12 U.S.C. § 1842(c)(3)(A).

reviewed the restrictions on disclosure of information in the relevant jurisdictions in which CIBC operates and has communicated with relevant government authorities concerning access to information. In addition, CIBC has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on its operations and the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act of 1978,¹⁶ and other applicable federal laws. CIBC also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it or its affiliates to make such information available to the Board.

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

Supervision or Regulation on a Consolidated Basis

As required by section 3 of the BHC Act, the Board considers whether CIBC is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.¹⁷ The Board previously has determined that CIBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the OSFI.¹⁸ CIBC remains supervised by the OSFI on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board concludes that CIBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

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.¹⁹ In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit

¹⁶ 12 U.S.C. § 3101 *et seq.*

¹⁷ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth for foreign banks and parent foreign banks in the Board's Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regulation examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank's financial condition on a worldwide, consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

¹⁸ *Canadian Imperial Bank of Commerce*, 87 *Federal Reserve Bulletin* 678 (2001); *Canadian Imperial Bank of Commerce*, 85 *Federal Reserve Bulletin* 733 (1999). In addition, in 2009 and 2013, it was determined that CIBC was subject to comprehensive supervision on a consolidated basis by the OSFI. Board letter to David R. Sahr, Esq., Mayer Brown LLP (March 26, 2013); *Canadian Imperial Bank of Commerce*, 95 *Federal Reserve Bulletin* B 101 (2009).

¹⁹ 12 U.S.C. § 1842(c)(2).

needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act of 1977 (“CRA”).²⁰ 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,²¹ 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.²²

In addition, the Board considers the banks’ overall compliance records and their 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 comments received on the proposal. The Board also may consider the institution’s business model, its 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 PrivateBank and Juniper Bank, Wilmington, Delaware;²³ the fair lending and compliance records of PrivateBank; the supervisory views of the Federal Deposit Insurance Corporation (“FDIC”); confidential supervisory information; information provided by CIBC; and the public comments received on the proposal.

The Board placed additional emphasis on PrivateBank’s record in meeting the convenience and needs of the communities it serves because PrivateBank will remain a separate entity and continue its existing CRA program after consummation of the proposed transaction.

Public Comments Regarding the Proposal

In this case, the Board received comments from two commenters expressing concerns about the proposal. One commenter criticized PrivateBank’s record of lending to small businesses in LMI communities within the St. Louis, Missouri, area. The commenter also alleged that PrivateBank’s bank services are not sufficiently accessible to LMI communities in the St. Louis area, as well as throughout the bank’s footprint in Illinois and other areas.

One commenter expressed concerns regarding whether PrivateBank’s lending to LMI borrowers and communities would continue to increase at its prior rate after consummation of the proposal. Two commenters urged CIBC to develop a community reinvestment plan,²⁴ and these commenters urged the Board to approve the application on the condition that CIBC successfully implement such a plan.²⁵

²⁰ 12 U.S.C. § 2901 *et seq.*

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

²³ CIBC controlled Juniper Bank from 2001 until 2004.

²⁴ Following CIBC’s submission of the applications, PrivateBank developed a community benefits plan in consultation with commenters and other organizations.

²⁵ The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal*

Businesses of the Involved Institutions and Response to Comments

CIBC provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and it operates in North America, Europe, and Asia. In the United States, many of CIBC's activities are conducted through Atlantic Trust Group, LLC, Atlanta, Georgia, which provides wealth management services; CIBC Inc., New York, New York, a commercial finance company; and CIBC World Markets Corp., New York, New York, a registered broker-dealer providing capital markets and investment banking services. CIBC maintains two branches in New York, New York, which provide corporate banking products and services, and a branch in Chicago, Illinois, which engages in the origination and servicing of real estate credit facilities. CIBC Holdco does not currently engage in any activities.

PrivateBank's primary focus is on commercial lending, including to medium-sized companies with annual revenues between \$10 million and \$2 billion. PrivateBank also provides private banking, residential mortgage banking, financial advisory, wealth management, and asset-management services to its customers. Although PrivateBank does offer traditional retail deposit and credit products, the majority of the bank's business is generated from commercial clients.

In response to the commenters' allegations, CIBC states that it will be committed to continuing to support the communities within the CRA assessment areas of PrivateBank. CIBC represents that, in recent years, PrivateBank has significantly increased its lending to small businesses in LMI census tracts in the St. Louis area as a percentage of its total small business lending in that area. CIBC also represents that, in recent years, PrivateBank has increased the percentage of its home mortgage lending in the St. Louis area that was originated in LMI census tracts, as well as the percentage that was originated to LMI borrowers. With regard to the accessibility of PrivateBank's services to LMI communities in the St. Louis area, CIBC represents that, although PrivateBank does not have a branch presence in LMI census tracts in the St. Louis area, PrivateBank leases office space in a low-income census tract that provides client meeting space for the bank's Community Development Lender team in St. Louis.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁶

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.²⁷ 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.

Reserve Bulletin 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 8412 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

²⁶ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

²⁷ 12 U.S.C. § 2906.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 Home Mortgage Disclosure Act of 1975,²⁸ 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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;²⁹ (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 credit needs of LMI individuals and geographies.

CRA Performance of PrivateBank

PrivateBank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of August 17, 2015 ("PrivateBank Evaluation"),³⁰ with ratings of "High Satisfactory" for the Lending Test, Investment Test, and Service Test.

Examiners found that PrivateBank's lending levels reflected good responsiveness to credit needs in its assessment areas, and that the bank exhibited a good record of serving the credit needs of LMI geographies and individuals within its assessment areas. Examiners also found the bank's geographic distribution of loans reflected good penetration of small business and home mortgage loans throughout the assessment areas. Further, examiners noted that PrivateBank was a leader in making community development loans and that the bank made extensive use of innovative and flexible lending practices in order to serve credit needs in its assessment areas.

In the St. Louis assessment area, an area of concern for commenters, examiners found that PrivateBank's lending levels reflected good responsiveness to assessment area credit needs. Examiners also noted that the geographic distribution of PrivateBank's loans reflected good penetration throughout the St. Louis assessment area, and that the distribution of loans reflected adequate penetration among borrowers of different income levels. However, examiners found that the distribution of loans reflected poor penetration among busi-

²⁸ 12 U.S.C. § 2801 *et seq.*

²⁹ Examiners also consider the number and amount 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).

³⁰ The PrivateBank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test, Investment Test, and Service Test was from April 8, 2013, through August 17, 2015. The PrivateBank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Chicago–Naperville–Elgin, Illinois–Indiana–Wisconsin, Metropolitan Statistical Area ("MSA"); the Detroit–Warren–Dearborn, Michigan, MSA; the St. Louis, Missouri–Illinois, MSA ("St. Louis assessment area"); and the Milwaukee–Waukesha–West Allis, Wisconsin, MSA.

nesses of different sizes within the assessment area. Examiners noted that the bank made a relatively high level of community development loans in the St. Louis assessment area during the review period.

Examiners found that PrivateBank made a significant level of qualified community development investments and grants, occasionally in a leadership position. Examiners noted that PrivateBank exhibited good responsiveness to the credit and community economic development needs of its assessment areas. Additionally, examiners noted that PrivateBank made significant use of innovative and complex investments to support community development initiatives. In the St. Louis assessment area, examiners noted that the bank had an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that are not provided by private investors.

Examiners found that the bank's retail delivery systems were accessible to limited portions of its assessment areas, but that its opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that the bank was a leader in providing community development services. Additionally, examiners noted that PrivateBank's services did not vary in a way that inconvenienced portions of its assessment areas, particularly LMI geographies and individuals.

In the St. Louis assessment area, examiners found that PrivateBank's delivery systems were accessible to limited portions of the assessment area. Examiners noted that the bank's branches in the assessment area were located in upper-income census tracts, but that the bank's loan production office in the assessment area was located in a low-income census tract. Additionally, examiners found that PrivateBank's services did not vary in a way that inconvenienced portions of the assessment area, particularly LMI geographies and individuals.

In Illinois, another area of concern for commenters, examiners found that PrivateBank's delivery systems were accessible to limited portions of the assessment area, including one moderate-income geography, and did not arbitrarily inconvenience any portions of the assessment area. Examiners also noted that PrivateBank was a leader in providing community development services.

PrivateBank's Efforts since the 2015 CRA Evaluation

CIBC represents that PrivateBank has taken steps to improve its identification of and responsiveness to community needs. CIBC represents that PrivateBank has begun offering a new suite of small business loan products designated for small businesses located in LMI geographies. Additionally, CIBC represents that PrivateBank has made additional investments in low-income housing tax credit funds and job-creation projects in LMI geographies and has made additional community development loans.

In the St. Louis assessment area, CIBC represents that PrivateBank has continued to increase the percentage of its home mortgage lending that is originated in LMI census tracts and the percentage that is originated to LMI borrowers. CIBC represents that PrivateBank has continued to increase the percentage of the bank's small business lending in the St. Louis area that is originated to small businesses in LMI census tracts. Additionally, CIBC represents that PrivateBank's ability to lend to small businesses in LMI census tracts in the St. Louis area was strengthened by the introduction in 2016 of a suite of proprietary affordable small business loan programs. CIBC represents that PrivateBank has taken steps to expand the marketing and outreach for its home mortgage and small business lending programs in the St. Louis area, including through newspaper advertisements

and community business events. CIBC also represents that PrivateBank has continued to support the credit needs of the St. Louis assessment area through community development loans, investments, and donations.

CRA Performance of Juniper Bank

CIBC does not currently control a bank in the United States. The most recent CRA performance evaluation of a U.S. bank controlled by CIBC was the evaluation of Juniper Bank by the FDIC, as of May 13, 2003 (“Juniper Bank Evaluation”), in which Juniper Bank was assigned an overall “Satisfactory” rating.³¹ Examiners noted that the bank originated an adequate amount of community development loans and qualified community development investments. Examiners also found that Juniper Bank employees provided a high level of community development services that demonstrated an excellent responsiveness to available opportunities. While CIBC no longer controls Juniper Bank, CIBC’s record of maintaining satisfactory CRA ratings and performance at Juniper Bank indicates that CIBC has experience and resources to ensure that PrivateBank is operated in a manner that helps serve the credit and other banking needs of its communities in a satisfactory manner.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding PrivateBank’s CRA, consumer compliance, and fair lending records. The Board has considered the results of a recent consumer compliance examination of PrivateBank conducted by FDIC examiners, which included a review of the bank’s compliance risk-management program and the bank’s compliance with consumer laws and regulations. The Board also has considered the results of a recent examination of PrivateBank’s compliance with the Fair Housing Act (“FHA”),³² which included a review of the bank’s lending data and its policies and procedures to ensure compliance with the FHA.

The Board has taken these consultations with the FDIC and the information discussed above into account when evaluating this proposal, including in considering whether CIBC has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm’s assessment areas.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. CIBC represents that the proposal would provide customers of the combined organization access to additional or expanded services, including retail banking services not currently offered to customers of CIBC’s U.S. subsidiaries and an expanded range of wealth management and advisory services not offered to current PrivateBank customers. In addition, CIBC states that the combined organization will be strengthened by the complementary aspects of the two entities’ businesses, as well as the combined experience and expertise of their respective management and employees, resulting in a stronger and more diversified financial institution.

³¹ Juniper Bank was a limited purpose bank for purposes of the Juniper Bank Evaluation and was evaluated under the Community Development Test. The evaluation period for the Juniper Bank Evaluation was from May 24, 2001, through May 12, 2003. Examiners reviewed the level of Juniper Bank’s qualified community development loans, investments, grants, and services in the bank’s designated assessment area of New Castle County, Delaware.

³² 42 U.S.C. § 3601 *et seq.*

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by CIBC, the public comments 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 concludes that the convenience and needs factor is consistent with approval.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by CIBC, the public comments 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 concludes that the convenience and needs factor is consistent with approval.

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 greater or more concentrated risks to the stability of the United States banking or financial system."³³

To assess the likely effect of a proposed transaction on the stability of the U.S. 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.³⁴ 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.³⁵

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. In the United States, CIBC primarily engages in securities brokerage and wealth management through various entities under CIBC USA Holdings, Inc., and in corporate banking through its U.S. branches. PrivateBancorp primarily engages in commercial banking and wealth management. In each of its activities, CIBC has, and as a result of the proposal would continue to have, a small market share on a

³³ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

³⁴ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

nationwide basis, and numerous competitors would remain. The combined organization would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would pose a significant risk to the financial system in the event of financial distress. There is little evidence that this proposal would materially increase the extent of CIBC's cross-border linkages. In addition, the organization would not be a critical services provider or be so interconnected with other firms or 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 U.S. 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 applications should be, and hereby are, 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 Applicants with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the 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 fifteenth 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 Chicago, acting under delegated authority.

By order of the Board of Governors, effective June 7, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

Order Issued Under Federal Reserve Act

United Bankshares, Inc.
Charleston, West Virginia

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-10 (April 6, 2017)

United Bankshares, Inc. (“UBI”), Charleston, West Virginia, and its subsidiary, UBV Holding Company, LLC (“UBV”, and together with UBI, “United”), Fairfax, Virginia, both bank holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ have requested the Board’s approval under section 3 of the BHC Act² to acquire Cardinal Financial Corporation (“Cardinal”) and thereby indirectly acquire Cardinal Bank, both of McLean, Virginia.

In addition, United’s subsidiary state member bank, United Bank (“United Bank-Virginia”), Fairfax, Virginia, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Cardinal Bank, with United Bank-Virginia as the surviving entity.³ United Bank-Virginia also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Cardinal Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 74803 (October 27, 2016)).⁵ 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, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

UBI, with consolidated assets of approximately \$14.3 billion, is the 99th largest insured depository organization in the United States.⁶ UBI controls approximately \$10.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ UBI controls two subsidiary banks, United Bank-Virginia and United Bank, Inc. (“United Bank-West Virginia”), Parkersburg, West Virginia,⁸ which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia. UBI is the 10th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$1.1 billion in the District of Columbia, which represent 2.4 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, UBI is the 18th largest insured depository organization in Maryland, controlling deposits of approximately \$761.1 million in Maryland, which

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These locations are listed in the Appendix.

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of September 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

⁷ In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

⁸ United Bank-Virginia is a wholly owned subsidiary of UBV, and UBV is a wholly owned subsidiary of UBI. UBI controls United Bank-West Virginia, a state member bank, through a separate mid-tier holding company, UBC Holding Company, Inc., Charleston, West Virginia.

represent 0.6 percent of the total deposits of insured depository institutions in that state, and the 8th largest insured depository organization in Virginia, controlling deposits of approximately \$4.1 billion in Virginia, which represent 1.5 percent of the total deposits of insured depository institutions in that state.

Cardinal, with consolidated assets of approximately \$4.2 billion, is the 228th largest insured depository organization in the United States. Cardinal controls approximately \$3.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cardinal controls Cardinal Bank, which operates in the District of Columbia, Maryland, and Virginia. Cardinal is the 19th largest insured depository organization in the District of Columbia, controlling deposits of approximately \$133.8 million in the District of Columbia, which represent 0.3 percent of the total deposits of insured depository institutions in that jurisdiction. In addition, Cardinal is the 43rd largest insured depository organization in Maryland, controlling deposits of approximately \$188.6 million in Maryland, which represent 0.2 percent of the total deposits of insured depository institutions in that state, and the 10th largest insured depository organization in Virginia, controlling deposits of approximately \$3.0 billion in Virginia, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, UBI would become the 86th largest insured depository organization in the United States, with consolidated assets of approximately \$18.6 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. UBI would control consolidated deposits of approximately \$13.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In the District of Columbia, UBI would become the 9th largest insured depository organization, controlling deposits of approximately \$1.2 billion in the District of Columbia, which represent 2.7 percent of the total deposits of insured depository institutions in that jurisdiction. In Maryland, UBI would become the 16th largest insured depository organization, controlling deposits of approximately \$949.7 million in Maryland, which represent 0.7 percent of the total deposits of insured depository institutions in that state. In Virginia, UBI would become the 7th largest insured depository organization, controlling deposits of approximately \$7.1 billion in Virginia, which represent 2.6 percent of the total deposits of insured depository institutions in that state.

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 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 is prohibited under state law.⁹ Under this section, the Board 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.¹⁰ In addition, the Board may not approve an interstate application if the bank holding company controls, or would upon consummation of the proposed transaction control, more than 10 percent of the total deposits of insured depository institutions in the United States¹¹ or, in certain circum-

⁹ 12 U.S.C. § 1842(d)(1)(A).

¹⁰ 12 U.S.C. § 1842(d)(1)(B).

¹¹ Similarly, the Bank Merger Act provides that, in general, the Board may not approve a bank merger if the transaction involves insured depository institutions with different home states and the resulting bank would control more than 10 percent of the total amount of deposits of insured depository institutions in the United

stances, if the bank holding company would upon consummation 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.¹²

For purposes of the BHC Act, the home state of UBI is West Virginia, and the home state of both UBV and Cardinal Bank is Virginia.¹³ Cardinal Bank is also located in the District of Columbia and Maryland. UBI and UBV are well capitalized and well managed under applicable law, and United Bank-Virginia has an “Outstanding” Community Reinvestment Act (“CRA”)¹⁴ rating. There are no minimum age requirements under the laws of the District of Columbia, Maryland, or Virginia that would apply to United’s acquisition of Cardinal, and Cardinal Bank has been in existence for more than five years.¹⁵

On consummation of the proposed transaction, UBI would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in the District of Columbia, Maryland, and Virginia, the only states in which United and Cardinal have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including United’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.¹⁶

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit 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. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition 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 community to be served.¹⁷

UBI and Cardinal have subsidiary depository institutions that compete directly in the Washington, District of Columbia, banking market (“Washington market”) and the

States. 12 U.S.C. § 1828(c)(13). For purposes of the Bank Merger Act, the home state of both United Bank-Virginia and Cardinal Bank is Virginia. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). Accordingly, the deposit cap requirement of the Bank Merger Act does not apply to the proposed bank merger.

¹² 12 U.S.C. § 1842(d)(2)(A) and (B). 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. For purposes of section 3(d) of the BHC Act, 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).

¹³ *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. A state bank’s home state is the state in which the bank is chartered.

¹⁴ 12 U.S.C. § 2901 *et seq.*

¹⁵ *See* D.C. Code §26-737; Md. Code Ann., Fin. Inst. §§ 5-901 to 5-910; Va. Code Ann. §6.1-44.18.

¹⁶ Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) permits the Board, in certain circumstances, to approve interstate merger transactions that would otherwise be prohibited under state law. 12 U.S.C. §1831u(a)(1). For purposes of the Riegle-Neal Act, an “interstate merger transaction” is one in which the insured banks proposing to merge have different home states. *See* 12 U.S.C. § 1831u(g)(4) and (6). The home state of both United Bank-Virginia and Cardinal Bank is Virginia; therefore, section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

¹⁷ 12 U.S.C. § 1842(c)(1) and 1828(c)(5).

Fredericksburg, Virginia, banking market (“Fredericksburg market”).¹⁸ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) that UBI would control;¹⁹ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²⁰ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Washington and Fredericksburg markets. On consummation of the proposal, the Washington market would remain unconcentrated and the Fredericksburg market would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets would be small, and numerous competitors would remain in the markets.²¹

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, including the Washington and Fredericksburg markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

¹⁸ The Washington market is defined as the District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George’s counties, all in Maryland; District 7 in Anne Arundel County, Maryland; the Clarksville and Savage districts in Howard County, Maryland; Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren counties in Virginia; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, all in Virginia; and Jefferson County, West Virginia. The Fredericksburg market is defined as the city of Fredericksburg, Virginia; and Caroline, King George, Orange, Spotsylvania, and Westmoreland counties, all in Virginia.

¹⁹ Deposit and market share data are as of June 30, 2016, 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 deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²⁰ 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.

²¹ UBI operates the 8th largest depository institution in the Washington market, controlling approximately \$5.5 billion in deposits, which represent approximately 2.9 percent of market deposits. Cardinal operates the 11th largest depository institution in the same market, controlling deposits of approximately \$3.2 billion, which represent 1.7 percent of market deposits. On consummation of the proposed transaction, UBI would become the 7th largest depository organization in the market, controlling deposits of approximately \$8.7 billion, which represent approximately 4.6 percent of market deposits. The HHI for the Washington market would increase by 10 points to 995, and 81 competitors would remain in the market.

UBI operates the 9th largest depository institution in the Fredericksburg market, controlling approximately \$55.4 million in deposits, which represent approximately 1.8 percent of market deposits. Cardinal operates the 10th largest depository institution in the same market, controlling deposits of approximately \$43.9 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, UBI would become the 8th largest depository organization in the market, controlling deposits of approximately \$99.3 million, which represent approximately 3.2 percent of market deposits. The HHI for the Fredericksburg market would increase by 5 points to 1749, and 16 competitors would remain in the market.

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 the Washington or Fredericksburg banking 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 the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²² In its evaluation of the 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, including capital adequacy, asset quality, 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.

UBI and Cardinal are well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of United Bank-Virginia and Cardinal Bank.²³ The asset quality, earnings, and liquidity of United Bank-Virginia and Cardinal Bank are consistent with approval, and United appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects 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 United, Cardinal, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by United; 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.

UBI, UBV, Cardinal, and their subsidiary depository institutions are considered to be well managed. United has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. United's directors and senior executive officers have knowledge of and experience in the banking and financial service sectors,

²² 12 U.S.C. §§ 1842(c)(2), (5), and (6); and 1828(c)(5) and (11).

²³ Applicants would merge Cardinal with and into UBV (with UBV as the survivor). At the time of the merger, each share of Cardinal common stock would be converted into a right to receive UBI common stock, based on an exchange ratio; holders of fractional shares would be entitled to a cash equivalent. United has the financial resources to fund the cash portion of the exchange.

and United's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered United's plans for implementing the proposal. United has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. With certain exceptions, United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, United's management has the experience and resources to operate the combined organization in a safe and sound manner, and United plans to integrate Cardinal's existing management and personnel in a manner that augments United's management.²⁴

Based on all the facts of record, including United's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of United and Cardinal 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 and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁵ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, 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 the communities to be served. In this evaluation, 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 they operate, consistent with their safe and sound operation,²⁶ 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.²⁷

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 comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

²⁴ On consummation, the UBI board of directors would be increased by one, and an individual currently serving as an executive director on the board of directors of Cardinal and Cardinal Bank would serve on the UBI board. Additionally, the United Bank-Virginia board of directors would be increased by two individuals that would be chosen by Cardinal.

²⁵ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

²⁶ 12 U.S.C. § 2901(b).

²⁷ 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 United Bank-Virginia and Cardinal Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by United; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from two commenters opposing the proposal.²⁸ Both commenters objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by United Bank-Virginia in the Washington, District of Columbia, Metropolitan Statistical Area (“Washington MSA”), as reflected in data reported under the Home Mortgage Disclosure Act (“HMDA”)²⁹ for the years 2013 through 2015. One commenter also asserted that, in the Washington MSA, United Bank-Virginia made a disproportionately low number of home purchase loans to majority-minority and LMI census tracts, and United Bank-West Virginia made a disproportionately low number of home purchase loans to LMI borrowers, as reported under HMDA for 2013 through 2015. Additionally, a commenter criticized the rate at which George Mason Mortgage, LLC (“George Mason”), a subsidiary of Cardinal Bank, denied applications by African Americans and Hispanics, compared to the rate of denials for whites, for conventional home purchase loans in the Washington MSA, as reported under HMDA for 2015.

One commenter also generally alleged that United Bank-Virginia and United Bank-West Virginia have inadequate records of helping to meet the convenience and needs of the communities where they do business because United Bank-Virginia received a “Low Satisfactory” rating on its Service Test in the Commonwealth of Virginia and United Bank-West Virginia received a “Low Satisfactory” rating on its Investment Test for the overall bank and in the Wheeling, West Virginia-Ohio Multistate Metropolitan Statistical Area, the State of West Virginia, and the Commonwealth of Pennsylvania, in the banks’ most recent CRA examinations, both as of 2015.

Business of the Involved Institutions and Response to Comments

United Bank-Virginia offers a broad range of retail and commercial banking products and services to consumers and businesses. Through its network of 54 branches located in the District of Columbia, Maryland, and Virginia, United Bank-Virginia offers a variety of banking products, including commercial, residential, agricultural, and consumer loans.

Cardinal Bank offers a similar range of retail and commercial products through 29 branches located in the District of Columbia, Maryland, and Virginia. Its products include checking and savings accounts, certificates of deposit, residential mortgages, treasury management services, commercial and consumer loans, and brokerage services. Cardinal Bank also provides residential mortgages through its subsidiary, George Mason.

²⁸ One commenter requested that the Board not approve the proposal until United enters into a community benefits plan that outlines how the bank plans to help meet the convenience and needs of the communities it serves. The Board has consistently found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. See, e.g., *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

²⁹ 12 U.S.C. §2801 *et seq.*

In response to the comments, United represents that United Bank-Virginia and Cardinal Bank are currently meeting the credit needs of their communities, including LMI and minority individuals, that the proposal would benefit the existing customers of both United Bank-Virginia and Cardinal Bank, and that the combined institution would continue to meet the credit needs of its entire community following consummation of the proposal. United represents that both United Bank-Virginia and Cardinal Bank have instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations.

With respect to United Bank-Virginia's lending in the Washington MSA, United represents that it has taken a number of steps, including creating a position solely dedicated to its fair lending program, to better serve minority communities. United also notes that United Bank-Virginia's record of lending in the Washington MSA shows a positive trend in the number of home purchase loans located in majority-minority census tracts. Additionally, United notes that, when United Bank-Virginia's lending in all HMDA categories is considered, the bank outperformed peer lenders in lending in LMI areas in 2014. United also asserts that the housing market is relatively expensive in the Washington MSA, which hinders the ability of low-income borrowers to purchase homes in the area, meaning that United Bank-Virginia has few potential low-income mortgage customers. In addition, United represents that a substantial amount of its small business lending within the Washington MSA is made to businesses located in majority-minority census tracts.

United argues that United Bank-Virginia's overall CRA rating of "Outstanding" and United Bank-West Virginia's overall CRA rating of "Satisfactory" are consistent with approval, notwithstanding the specific ratings noted by a commenter. United notes that United Bank-Virginia received an overall bankwide "High Satisfactory" rating on the Service Test and that, in the Commonwealth of Virginia, examiners found that the bank's delivery systems and branch locations were accessible to all segments of the assessment areas and that the bank had an adequate level of participation in qualified community development services that generally benefit affordable housing and micro-enterprise development.

With respect to a commenter's allegation regarding United Bank-West Virginia's record of lending to LMI individuals within the Washington MSA, United notes that United Bank-West Virginia outperformed peer lenders, when considering all categories of HMDA loans, in LMI areas within the Washington MSA. Additionally, United notes that United Bank-West Virginia's distribution of HMDA loans by level of borrower income for the years 2013 through 2015 was similar to that of the aggregate of lenders in the Washington MSA, and that the bank's lending to LMI borrowers in the Washington MSA as reported in 2015 HMDA data outperformed peer lenders.

In response to one commenter's criticism of United Bank-West Virginia's "Low Satisfactory" CRA rating on the Investment Test for the overall bank and in several of the bank's assessment areas, United notes that United Bank-West Virginia has significantly increased its level of community development investment since the bank's most recent CRA examination. United also represents that United Bank-West Virginia is taking steps to improve its investment performance in Pennsylvania and West Virginia, including creating new partnerships with community development finance institutions, starting a relationship with a company that is awaiting a Small Business Investment Company designation from the United States Small Business Administration, and making an investment in a school district in which a majority of students qualify for a free or reduced-price lunch.

With respect to George Mason's lending in the Washington MSA, United represents that George Mason outperformed peer lenders in lending in LMI areas. Additionally, United

asserts that George Mason conducts various activities that are focused on serving minority and LMI communities, including marketing and outreach to historically underserved neighborhoods and populations; periodic reviews of George Mason's policies, procedures, and lending outcomes to ensure that lender discretion is clearly outlined and to confirm compliance with fair lending laws; and community outreach efforts to support lending in LMI and minority areas. United represents that George Mason's fair lending policies with respect to first mortgage lending would be adopted in the combined entity.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.³⁰ In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Richmond ("Reserve Bank") and 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.³¹ 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 lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas and the number and amount 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 amount of loans to low-, moderate-, middle-, and upper-income individuals;³² (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

³⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³¹ 12 U.S.C. § 2906.

³² Examiners also consider the number and amount 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).

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.³³ Consequently, HMDA data must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of United Bank-Virginia

United Bank-Virginia was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of October 19, 2015 ("United Bank-Virginia Evaluation").³⁴ The bank received an "Outstanding" rating for the Lending Test, and "High Satisfactory" ratings for both the Investment Test and the Service Test.

Examiners concluded that the bank's overall lending activity was excellent relative to the bank's capacity to lend and the economic conditions within the bank's market areas. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, examiners found that the geographic distribution of the bank's loans reflected good penetration throughout its assessment areas and that the distribution of its borrowers reflected good penetration among borrowers of different income levels and businesses of different sizes. Additionally, examiners found that United Bank-Virginia was a leader in community development lending.

In the Washington, D.C., assessment area, an area of concern for the commenters, United Bank-Virginia's performance under the Lending Test was rated "Outstanding." Examiners found that the bank's lending activity in the assessment area was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners found that the geographic distribution of the bank's loans in the Washington, D.C., assessment area was excellent, while the overall borrower distribution was good. Examiners also noted that United Bank-Virginia was a leader in providing community development loans in the assessment area.

In the Commonwealth of Virginia, another area of concern to a commenter, United Bank-Virginia's performance under the Lending Test was rated "High Satisfactory." Examiners found that the bank's lending activity within the statewide market was consistent with the bank's capacity and that the bank offered a broad range of loan products to meet the needs of the statewide area. Examiners also noted that the bank's borrower distribution throughout the state was good and the geographic distribution of its loans was adequate.

With respect to the Investment Test, examiners found that the bank had a high level of participation in community development investments, showing responsiveness to community credit needs. Examiners noted that the bank made a number of investments to support affordable housing initiatives, as well as charitable donations to a variety of community

³³ Other data 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.

³⁴ The United Bank-Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. The evaluation period for community development lending, investments, and services was June 4, 2013, through October 19, 2015.

The United Bank-Virginia Evaluation included full-scope evaluations of the Washington-Baltimore-Arlington, D.C.-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area ("Washington CSA") and the Harrisonburg-Staunton-Waynesboro, Virginia, CSA. Limited scope evaluations were performed in the Charlottesville, Virginia, MSA and in Shenandoah County, Virginia.

development organizations that facilitate small business development, revitalize or stabilize LMI geographies, and focus on local job creation within the bank's assessment areas. In both the Washington, D.C., assessment area and Virginia, United Bank-Virginia's performance under the Investment Test was rated "High Satisfactory." Examiners in both areas found that the bank maintained a significant level of qualified investments that benefit the bank's market areas.

Examiners found United Bank-Virginia's delivery systems and branch locations to be accessible to all segments of the bank's assessment areas. Examiners noted that branch closings by the bank had not adversely affected LMI neighborhoods. Additionally, examiners noted that the bank engaged in a high level of community development services within its primary market areas. Overall, examiners noted that the bank showed a high level of support for affordable housing efforts, community services, and economic development within its assessment areas.

In the Washington, D.C., assessment area, examiners rated United Bank-Virginia's performance on the Service Test as "High Satisfactory." Examiners noted that the bank's delivery systems and branch locations were accessible to all segments of the assessment area and that the bank had a relatively high level of participation in qualified community development services benefiting the assessment area.

In Virginia, United Bank-Virginia's performance on the Service Test was rated as "Low Satisfactory." Examiners found that the bank's delivery systems in Virginia were reasonably accessible to all portions of United Bank-Virginia's market areas and to people of various income levels. Additionally, examiners noted that the products and services offered by United Bank-Virginia within Virginia were representative of those offered by the institution overall and that the bank's employees participated in an adequate level of community development activities involving the provision of financial expertise to organizations assisting in small business funding.

United Bank-Virginia's Efforts since the 2015 CRA Evaluation

United represents that United Bank-Virginia has taken steps to further strengthen its CRA performance since the United Bank-Virginia Evaluation. United Bank-Virginia asserts that it has continued to offer several special loan programs throughout its assessment areas that benefit LMI borrowers, small businesses, affordable housing projects, and other community development initiatives. Additionally, United Bank-Virginia represents that it has increased the number and dollar amount of donations to community development activities and social service organizations in its assessment areas, and that the bank's employees have volunteered by teaching financial literacy to students at 75 local schools.

CRA Performance of United Bank-West Virginia

United Bank-West Virginia received a "Satisfactory" CRA performance rating on its most recent CRA examination by the Reserve Bank, as of October 19, 2015 ("United Bank-West Virginia Evaluation").³⁵ The bank received ratings of "High Satisfactory" for the Lending Test, "Low Satisfactory" for the Investment Test, and "Outstanding" for the Service Test.

³⁵ The United Bank-West Virginia Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage loans reported, pursuant to HMDA, and small business and small farm loans reported under CRA data collection requirements for 2013 and 2014. Examiners reviewed qualified community development loans that were originated from June 3, 2013, through October 19, 2015. The evaluation period for investments and services was June 3, 2013, through October 19, 2015.

The United Bank-West Virginia Evaluation included full-scope evaluations of the Washington CSA; the Wheeling, West Virginia-Ohio, CSA ("Wheeling assessment area"); the Charleston-Huntington-Ashland, West

Examiners found that United Bank-West Virginia's overall lending levels were consistent with the bank's capacity and market presence. According to examiners, a high percentage of the institution's reported HMDA and small business loans was originated within the bank's assessment areas. Additionally, examiners noted that the geographic distribution of the bank's lending was excellent overall. Examiners also found that the bank's borrower distribution performance was good overall.

In the Washington, D.C., assessment area, Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated United Bank-West Virginia's performance on the Lending Test as "High Satisfactory." In the Washington, D.C., assessment area, examiners found that the bank's lending activity was consistent with the bank's capacity and helped to meet identified community credit needs. Additionally, examiners noted that the geographic distribution of the bank's lending was excellent, while the borrower distribution of loans was good. Examiners also noted that the bank originated a relatively high level of community development loans.

In the Wheeling assessment area, examiners found that the bank's lending activity was good and consistent with the bank's capacity and that it helped to meet identified credit needs. Examiners noted that the geographic and borrower lending distributions within the assessment area was good for each lending product reviewed. Additionally, examiners found that the bank originated an adequate level of community development loans within the assessment area.

In West Virginia and Pennsylvania, examiners found that the bank's lending activity in both states was consistent with the bank's capacity and that the bank offered a broad spectrum of loan products in an effort to meet local credit needs. Examiners noted that the geographic distribution of the bank's lending within the states was excellent and adequate, respectively, while borrower lending distribution was good. Additionally, examiners found that the bank was a leader in providing community development loans within the states.

As noted, United Bank-West Virginia's overall performance under the Investment Test was rated "Low Satisfactory." Examiners noted that the bank maintained an adequate level of qualified community development investments when considering the available opportunities for such investments. Examiners also noted that the bank had made charitable donations supporting organizations whose operations primarily support LMI individuals.

Examiners rated United Bank-West Virginia's performance under the Investment Test as "High Satisfactory" within the Washington, D.C., assessment area. Examiners found that the bank's level of qualified investments maintained good responsiveness in the assessment area. In the Wheeling assessment area, the State of West Virginia, and the Commonwealth of Pennsylvania, examiners rated the bank's performance under the Investment Test as "Low Satisfactory." In each of these geographical areas, examiners found that the bank maintained an adequate level of qualified investments.

Examiners found that United Bank-West Virginia's delivery systems and branch locations were readily accessible to all segments of the bank's assessment areas. Additionally, examiners noted that the bank was a leader in supporting community development services throughout its assessment areas.

Virginia-Ohio-Kentucky, CSA; the Morgantown, West Virginia, MSA; the Braxton, West Virginia, nonmetropolitan statistical area; and the Pittsburgh, Pennsylvania, MSA. Limited scope evaluations were performed in the Beckley, West Virginia, MSA; the Parkersburg-Marietta-Vienna, West Virginia-Ohio, MSA; the Weirton-Steubenville, West Virginia-Ohio, MSA; and the Jackson, West Virginia, nonmetropolitan statistical area.

In the Washington, D.C., assessment area and the Wheeling assessment area, examiners rated United Bank-West Virginia's performance in the Service Test as "High Satisfactory." Examiners noted that, in both areas, the bank's delivery systems and branch locations were readily accessible to all segments of the assessment area and that the bank had an adequate level of participation in qualified community development services benefiting the assessment area. In West Virginia, examiners rated the bank's performance in the Service Test as "Outstanding." Examiners found that the bank's delivery systems and branch locations were readily accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank was a leader within its market areas in the state in providing community development services. In Pennsylvania, examiners rated the bank's performance in the Service Test as "High Satisfactory." Examiners found that the bank's delivery systems and branch locations were accessible to all segments of the bank's assessment area within the state. Additionally, examiners noted that the bank and its employees participated in a relatively high level of community development activities.

United Bank-West Virginia's Efforts since the 2015 CRA Evaluation

United represents that, since the United Bank-West Virginia Evaluation, the bank has significantly increased its community development investment levels. As noted, United Bank-West Virginia has formed partnerships in West Virginia to explore new investment opportunities and has made, or is in the process of finalizing, investments in West Virginia to support rural health development and in Pennsylvania to support the education of local LMI students.

CRA Performance of Cardinal Bank

Cardinal Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 28, 2015 ("Cardinal Bank Evaluation").³⁶ The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.

Examiners found that the bank's overall lending levels reflected good responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment area. Overall, examiners found that the geographic distribution of the bank's loans reflected adequate penetration throughout the assessment area. Examiners found that the bank's distribution of borrowers reflected a good penetration among retail customers of different income levels. Additionally, examiners found that the bank used flexible lending practices in order to serve the assessment area's credit needs. Examiners noted that the bank made a relatively high level of community development loans and that these loans were responsive to the community's credit needs.

Examiners found that Cardinal Bank had a significant level of qualified community development investments and grants and that the bank occasionally acted in a leadership position for such investments. Examiners noted that the bank exhibited a good responsiveness to the credit and community economic development needs of its assessment area.

Examiners found Cardinal Bank's delivery systems to be accessible to essentially all portions of the bank's assessment area. Examiners noted that the bank's opening and

³⁶ The Cardinal Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed the bank's loans reported pursuant to the HMDA and the CRA for 2013, 2014, and the first two quarters of 2015. The evaluation period for the Investment Test and the Service Test was April 30, 2013, through September 29, 2015. The Cardinal Bank Evaluation included a full-scope evaluation of the Washington CSA.

closing of branches had not adversely affected the accessibility of its delivery systems. Additionally, examiners noted that the bank's services did not vary in a way that inconvenienced portions of its assessment area or any group of individuals. Examiners also noted that the bank provided a relatively high level of community development services in its assessment area.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of United Bank-Virginia and United Bank-West Virginia conducted by Reserve Bank examiners, which included a review of the banks' compliance risk-management program and the banks' compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated United Bank-Virginia's and United Bank-West Virginia's fair lending compliance management program, including the banks' fair lending-related policies, procedures, and limits; board and senior management oversight of the banks' fair lending management program; fair lending risk-monitoring and management information systems; and internal controls relating to fair lending.

The Board also has considered the results of a recent consumer compliance examination of Cardinal Bank conducted by FDIC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations.

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. United represents that it plans to continue its current offering of products and services upon consummation of the proposal. United also represents that existing customers of Cardinal Bank would have access to a more extensive complement of products and services than those currently available to them, including new or enhanced products and services in areas such as brokerage services, custody, trust and estate services, business checking products and services, cash management, government contract lending, and nonprofit services. Additionally, United asserts that customers of Cardinal Bank would benefit from a more expansive branch and ATM network. United also represents that existing customers of United Bank-Virginia would benefit from access to products and services offered by George Mason. United represents that the proposal would create an expanded product offering for first-time home buyers and provide additional opportunities for United Bank-Virginia's LMI customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by United, the public comments 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 concludes that the convenience and needs considerations are consistent with approval.

The Board also expects United to continue to improve its performance under the investment tests in West Virginia and Pennsylvania and to ensure that its efforts to help meet the convenience and needs of the communities it serves are commensurate with its size, activities, and prominence in its communities.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal’s risk “to the stability of the United States banking or financial system.”³⁷

To assess the likely effect of a proposed transaction on the stability of the U.S. 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.³⁸ 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.³⁹

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that results 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 would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁰

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in a variety of retail commercial banking activities.⁴¹ 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 U.S. banking or

³⁷ Sections 604(d) and (f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602, codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

³⁸ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁹ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

⁴⁰ 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.

⁴¹ In each of the activities in which it engages, United has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

United Bank-Virginia has applied under section 9 of the FRA to establish branches at the current locations of Cardinal Bank.⁴² The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴³ Specifically, the Board has considered United Bank-Virginia's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.⁴⁴ For the reasons discussed in this order, the Board finds these factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁴⁵ 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, the Bank Merger Act, the FRA, and other applicable statutes. Approval of this proposal is specifically conditioned on compliance by UBI and UBV with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the 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 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 fifteenth 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 by the Reserve Bank acting under delegated authority.

By order of the Board of Governors, effective April 6, 2017.

⁴² 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that, under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of United Bank-Virginia's branches would be permissible under applicable state law. *See* D.C. Code §26-735(b); Md. Code, Com. Law §5-1003(a)(3); Va. Code Ann. §6.2-831.

⁴³ 12 U.S.C. § 322; 12 CFR 208.6.

⁴⁴ Upon consummation of the proposed transaction, United Bank-Virginia's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

⁴⁵ A commenter requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial 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 may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on October 27, 2016, and in a relevant newspaper of general circulation (*The Washington Post*) on October 20, October 27, and November 10, 2016. The comment period ended on November 25, 2016. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches to Be Established by United

District of Columbia Branches

- 1776 K Street, NW
Washington, DC 20006
- 1825 Wisconsin Avenue, NW
Washington, DC 20007

Maryland Branches

- 7315 Wisconsin Avenue
Bethesda, Maryland 20814
- 1807 Rockville Pike
Rockville, Maryland 20852

Virginia Branches

- 1737 King Street
Alexandria, Virginia 22207

- 4115 Annandale Road
Annandale, Virginia 22207
- 5335 Lee Highway
Arlington, Virginia 22207
- 2100 North Glebe Road
Arlington, Virginia 22207
- 2505 Wilson Boulevard
Arlington, Virginia 22201
- 6402 Williamsburg Boulevard
Arlington, Virginia 22207
- 4300 Wilson Boulevard
Suite 102
Arlington, Virginia 22203

Order Issued Under International Banking Act

Nordea Bank AB
Stockholm, Sweden

*Order Approving Establishment of a Branch
FRB Order No. 2017-11 (April 13, 2017)*

Nordea Bank AB (publ) (“Nordea Bank Sweden”), Stockholm, Sweden, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 7(d) of the IBA¹ to retain the state-licensed branch in New York, New York, of Nordea Bank’s former wholly-owned subsidiary bank, Nordea Bank Finland plc (“Nordea Bank Finland”), Helsinki, Finland, following consummation of an internal reorganization of Nordea Bank Sweden and its consolidated subsidiaries (“Nordea Group”). The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, December 1, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

Nordea Bank Sweden is the parent company and top-tier banking organization of Nordea Group. Sampo plc (“Sampo”), a Finnish company, owns 21.3 percent of Nordea Bank Sweden’s outstanding shares and is the largest individual shareholder of Nordea Bank Sweden.² No other shareholder owns more than 5 percent of the shares of Nordea Bank Sweden.

Nordea Bank Sweden proposes to retain the former New York branch of Nordea Bank Finland following an internal reorganization in which Nordea Bank Sweden’s bank subsidiaries in Denmark, Finland, and Norway (“Nordic Bank Subsidiaries”) were converted into branches of Nordea Bank Sweden by way of mergers between Nordea Bank Sweden and each of the Nordic Bank Subsidiaries.³ Following the mergers, the banking business will be conducted through branches of Nordea Bank Sweden in Denmark, Finland, Norway, and the United States.

Nordea Bank Sweden has consolidated assets of approximately \$739 billion.⁴ It is an operating bank that engages directly in banking activities usual in connection with the business of banking in the countries in which it operates, including by offering retail and

¹ 12 U.S.C. § 3105(d).

² Sampo has two director interlocks with Nordea Bank Sweden and is considered to control Nordea Bank Sweden for purposes of the Bank Holding Company Act (“BHC Act”). 12 U.S.C. § 1841 *et seq.* Nordea Bank Sweden and Sampo have each committed to notify the Board if Sampo’s ownership interest in Nordea Bank Sweden increases to more than 21.3 percent. The Finanssivalvota Finansinspektionen, the Finnish supervisory authority, is the primary supervisor of Sampo, which is regarded as a financial conglomerate under the European Union’s Financial Conglomerates Directive. Sampo’s holding of Nordea Bank Sweden is consistent with section 4 of the BHC Act.

³ On November 18, 2016, the Board’s General Counsel approved, under delegated authority, a request pursuant to section 211.24(a)(6) of the Board’s Regulation K from Nordea Bank Sweden to proceed with the proposed internal reorganization prior to Board action on Nordea Bank Sweden’s application to establish a branch in the United States, but subject to the Board’s action on the application. Nordea Bank Sweden executed its internal reorganization on January 2, 2017. These mergers are structured as transfers of all the assets and liabilities of the Nordic Bank Subsidiaries to Nordea Bank Sweden.

⁴ Asset data are as of September 30, 2016.

wholesale banking products to customers inside and outside of Sweden. In the United States, Nordea Bank Sweden operates the former New York branch of Nordea Bank Finland (“NY Branch”). Nordea Bank Sweden indirectly owns Nordea Investment Management North America, Inc., a U.S. asset management company incorporated in Delaware and registered with the U.S. Securities and Exchange Commission. Nordea Bank Sweden is a qualifying foreign banking organization under Regulation K.⁵ Since the merger of Nordea Bank Finland into Nordea Bank Sweden, the NY Branch has serviced Nordea Bank Sweden’s customers doing business in the United States, Canada, and elsewhere. The branch also offers loans and other credit services, cash management services, and markets services including foreign exchange.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁶ The Board also considers additional standards as set forth in the IBA and Regulation K.⁷

In this case, the Finansinspektionen, the Swedish financial supervisory authority (“SFA”), remains the primary supervisor of Nordea Bank Sweden on a consolidated basis after the Nordea Group’s internal reorganization. The SFA also gained direct responsibility for supervising the branches that were formerly subsidiaries of Nordea Bank Sweden.

⁵ 12 CFR 211.23(a). Sampo and Nordea Bank Sweden would also together meet the standards to be a qualifying foreign banking organization. Nordea Bank Sweden has committed to inform the Board if either Sampo no longer qualifies as a qualifying foreign banking organization or Sampo engages in activities or makes investments in the United States that are not permissible under regulations promulgated by the Board, including section 211.23(f) of Regulation K. Separately, Sampo has committed to provide, on an annual basis, a written statement indicating whether it is, directly or indirectly, engaged in activities in the United States for purposes of the Board’s Regulation K.

⁶ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisors receive sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors: (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

⁷ 12 U.S.C. § 3105(d)(3)-(4) and 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank’s home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank’s record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

The SFA is primarily responsible for the supervision of Swedish banking organizations and has authority to regulate the establishment and activities of banking institutions and to approve their business expansions, both domestically and abroad.⁸ The SFA monitors Swedish banks' consolidated financial condition, compliance with laws and regulations, and internal controls through a combination of on-site examinations, off-site surveillance through the review of required regulatory reports and external audit reports, and interaction with senior management.

The SFA has established a risk classification system for determining an institution's supervision plan. The supervision includes an assessment of the institution's internal capital and liquidity and is supplemented by regular risk reviews, which include credit risk, market risk, operational risk, and liquidity risk. In addition, the SFA conducts on-site and off-site reviews of Nordea Bank Sweden and its Swedish subsidiaries. Examination findings and areas of concern are discussed with senior management of the bank, and corrective actions taken by the bank are monitored by the SFA. The off-site monitoring system requires all Swedish banks to submit monthly, quarterly, semi-annual, or annual reports relating to asset quality, lending concentrations, capital adequacy, earnings, liquidity, affiliate transactions, off-balance sheet exposures, and ownership and control. In addition, banks must file annual externally audited consolidated financial statements. New reports are added to permit collection and analysis of information as new issues develop and the focus of SFA oversight is adjusted.

The SFA is represented in the Swedish Financial Stability Council, which was established to discuss issues relating to financial stability.⁹ The SFA has been participating in various European Banking Authority ("EBA") initiatives and has established a supervisory system for Swedish banks in line with the EU directives, including those related to capital adequacy and recovery and resolution frameworks. The SFA is also a full member of the Basel Committee of Banking Supervision, the Financial Stability Board, and global standard-setting bodies relating to securities and insurance businesses. Overall, the SFA's approach to supervision is risk-focused and its regulations and directives are intended to strengthen practices consistent with the Basel Core Principles for Effective Banking Supervision.

While the SFA is the consolidated primary supervisor, other regulators supervise the activities of particular subsidiaries or activities of Swedish banks. Nordea Bank Sweden states that it has retained local subsidiaries in Denmark, Finland, and Norway after the reorganization for the purpose of making residential mortgage loans and issuing covered bonds. These entities will be supervised by the local competent authorities. In the EU, colleges of supervisors are the vehicles for the coordination of supervisory activities. Under EU law, colleges of supervisors have to be established for European Economic Area ("EEA") banks with subsidiaries or significant branches in other EEA countries and, where relevant, may include supervisors from non-EEA countries. The EBA has issued regulatory and implementing technical standards on the functioning of colleges of supervisors.¹⁰ The SFA regu-

⁸ Sweden is a European Union ("EU") member state but is not a euro area country and does not currently participate in the Single Supervisory Mechanism ("SSM") under the supervision of the European Central Bank ("ECB"). For the EU member countries that are in the euro area and non-euro area members that choose to participate, the ECB is now the competent authority for the supervision of all large internationally active banking organizations under the SSM. As Sweden has, for the time being, decided not to participate in the SSM, no supervisory responsibilities have been transferred from the SFA to the ECB.

⁹ Other members of the council are the Swedish central bank, Sveriges Riksbank; the Swedish National Debt Office; and the Swedish Ministry of Finance.

¹⁰ In 2008, the SFA and the national supervisory authorities of countries including Denmark, Norway, Finland, and Luxembourg entered into a Multilateral Cooperation and Coordination Agreement for the supervision of Nordea Bank Sweden and its subsidiaries and significant branches.

larly coordinates supervision with these agencies and shares and receives data and information from these agencies.

The Finanssivalvonta Finansinspektionen, the Finnish financial supervisory authority (“Finnish FSA”), remains the primary supervisor of Sampo on a consolidated basis following the Nordea Group’s internal reorganization. The Finnish FSA is primarily responsible for the supervision of Finnish banking and insurance organizations. Sampo, which is headquartered in Finland and owns shares in companies engaged in banking, fund management, and insurance in several countries in the EEA, is considered a financial conglomerate under the EU’s Financial Conglomerates Directive. Finnish regulations for supervising financial conglomerates are based on the directives issued by the European Parliament and the European Council. The main focus of conglomerate supervision is on capital adequacy, large common exposures, intra-conglomerate exposures, other similar business relationships, and internal risk management. The Finnish FSA requires reports on capital adequacy and on risk concentrations as they relate to single, or a group of related, counterparties or specific products. The Finnish FSA also requires reports on all significant inter-group transactions of regulated entities within the financial conglomerate. Transactions between Sampo and Nordea Bank Sweden are required to be on an arms-length basis. Nordea Bank Sweden’s primary supervisor, the SFA, and other national competent authorities from jurisdictions in which Sampo has operations participate as host country supervisors in the Sampo financial conglomerate supervisory college.

Based on the facts of record and the supervisory system that the SFA and the Finnish FSA have in place, the Board has determined that Nordea Bank Sweden and Sampo are subject to comprehensive supervision on a consolidated basis

The Board has also considered the financial and managerial and other applicable factors in the case. The SFA and Finnish FSA have no objections to the establishment of the proposed branch. Sweden’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Basel Accord”). Nordea Bank Sweden’s capital is in excess of the minimum levels that would be required by the Basel Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Nordea Bank Sweden are considered consistent with approval, and Nordea Bank Sweden appears to have the experience and capacity to support the proposed branch. In addition, Nordea Bank Sweden has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

Sweden is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Sweden has enacted laws and regulations to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Sweden, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Nordea Bank Sweden has policies and procedures to comply with these laws and regulations, and Nordea Bank Sweden’s compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

Nordea Bank Sweden has committed to make available to the Board such information on its operations and on those of any of its affiliates, including Sampo, that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Nordea Bank Sweden has

committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that Nordea Bank Sweden has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.¹¹ Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to (1) the size and scope of Nordea Bank Sweden's activities, including the type of activities it proposes to conduct in the United States and the potential for these activities to increase or transmit financial instability, and (2) the framework in place for supervising Nordea Bank Sweden in its home jurisdiction. Based on these and other factors, financial stability considerations for this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Nordea Bank Sweden as well as the terms and conditions set forth in this Order, Nordea Bank Sweden's application to establish a branch in New York is hereby approved. Should any restrictions on access to information on the operations or activities of Nordea Bank Sweden and its affiliates, including Sampo, subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Nordea Bank Sweden and its affiliates, including Sampo, with applicable federal statutes, the Board may require termination of any of Nordea Bank Sweden's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Nordea Bank Sweden with the commitments made in connection with this application and with the conditions in this Order.¹²

By order of the Board of Governors, effective April 13, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

¹¹ Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.S.C. § 3105(d)(3)(E).

¹² The Board's authority to approve the establishment of a branch parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York and its agent, the New York State Department of Financial Services, to license the proposed branch of Nordea Bank Sweden in accordance with any terms and conditions that the New York State Department of Financial Services may impose. The New York State Department of Financial Services approved Nordea Bank Sweden's application to establish the branch on November 29, 2016.

Order Issued Under Home Owners' Loan Act

TIAA Board of Overseers
New York, New York

Teachers Insurance and Annuity Association of America
New York, New York

TCT Holdings, Inc.
New York, New York

Order Approving the Acquisition and Merger of Savings and Loan Holding Companies FRB Order No. 2017-16 (June 7, 2017)

TIAA Board of Overseers (“Overseers”), Teachers Insurance and Annuity Association of America (“TIAA”), and TCT Holdings, Inc. (“TCT”) (collectively, “Applicants”), each of New York, New York, and each a savings and loan holding company (“SLHC”) have requested the Board’s approval under section 10(e) of the Home Owners’ Loan Act, as amended (“HOLA”),¹ to acquire and merge with EverBank Financial Corp. (“EFC”), an SLHC, and indirectly acquire its subsidiary federal savings association, EverBank, both of Jacksonville, Florida.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 69530 (October 6, 2016)).² The time for submitting comments has expired, and the Board has considered the proposal, all comments received, and the factors set forth in section 10(e) of HOLA in light of all the information of record.³ The Office of the Comptroller of the Currency (“OCC”) has approved the related application under section 18(c) of the Federal Deposit Insurance Act⁴ for TIAA-CREF Trust Company FSB (“TIAA FSB”), St. Louis, Missouri, to merge with and into EverBank.

Applicants, with total assets⁵ of approximately \$282.4 billion, control TIAA FSB and approximately \$3.6 billion in deposits, which represent less than

1 percent of the total amount of deposits in the United States.⁶ TIAA FSB conducts all of its banking activities through a nationwide Internet platform.

EFC, with consolidated assets of approximately \$27.8 billion, is the 64th largest depository organization in the United States. EFC controls EverBank, the 6th largest depository institution in Florida, controlling approximately \$18.9 billion in deposits, which represent 3.7 percent of the total deposits held by insured depository institutions in Florida.⁷

On consummation of the proposal, Applicants would have total assets of approximately \$282.4 billion and would control deposits of approximately \$23.3 billion, which represent

¹ 12 U.S.C. § 1467a(e).

² 12 CFR 238.14(c)(2).

³ 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

⁴ 12 U.S.C. § 1828(c).

⁵ As an insurance company, TIAA follows statutory accounting principles and does not prepare consolidated financial statements under U.S. generally accepted accounting principles. As used here, “total assets” includes only those assets of the insurer that are allowable or admitted under statutory accounting rules.

⁶ Deposit data are as of December 31, 2016, unless otherwise noted.

⁷ State deposit and ranking data are as of June 30, 2016.

less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁸ In Florida, Applicants would become the 6th largest depository organization, controlling deposits of approximately \$18.9 billion, which represent 3.7 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 10(e)(2)(E) of HOLA generally provides that the Board may not approve an application by an SLHC to acquire an insured depository institution in a state other than the SLHC's home state if the SLHC controls, or upon consummation would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States, unless the acquisition involves an insured depository institution in default or danger of default.⁹

For purposes of HOLA, EverBank's home state is Florida, and Applicants' home state is Missouri.¹⁰ On consummation of the proposed transaction, Applicants would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 10(e)(2)(E) of HOLA.

Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly, or that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States.¹¹ HOLA also prohibits the Board from approving a proposal if the proposal would substantially lessen competition, tend to create a monopoly, or in any other manner restrain trade in any section of the country, 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 community to be served.¹²

EverBank maintains ten retail branches, all of which are located in Florida, but operates primarily as an online depository institution. TIAA FSB does not operate any physical retail branches and interacts with customers through an Internet platform. Each bank controls a relatively small amount of deposits when compared to the amount of deposits taken over the Internet as a whole.¹³ TIAA FSB and EverBank compete in local markets throughout the nation through their Internet platforms; however, both institutions solicit deposits from across the country, making it unlikely that either institution holds a high concentration of Internet deposits in any local market. Based on the size of the institutions, the large number of Internet-based competitors, and the diffuse geographic nature of the Internet deposits of EverBank and TIAA FSB, the proposed transaction would not result

⁸ TIAA utilizes equity method accounting for its investments in subsidiaries, as mandated under statutory accounting principles. Accordingly, Applicants' total assets would not be materially affected by the acquisition.

⁹ 12 U.S.C. § 1467a(e)(2)(E).

¹⁰ 12 U.S.C. § 1467a(e)(7)(B)(iii) and (iv). A federal savings association's home state is the state in which its home office is located. An SLHC's home state is the state in which the total deposits of all insured depository institution subsidiaries of such company were the largest on the date on which the company became an SLHC.

¹¹ 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

¹² 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

¹³ Data concerning the total amount of deposits gathered over the Internet by all depository institutions are not available. However, data concerning the amount of deposits gathered by Internet-only depository institutions, a subset of depository institutions that take deposits over the Internet, are available. The resultant institution's share of all deposits of Internet-only depository institutions (including the share of deposits attributable to EverBank's retail branches that would survive the merger) would be less than 5 percent.

in a material increase in concentration in any single market, including any in which EverBank has a physical location.¹⁴ Consummation of the proposal would be consistent with Board precedent and within the thresholds in the Department of Justice (“DOJ”) Bank Merger Guidelines.

The DOJ 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.

Based on all of 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 and Managerial Resources and Future Prospects

In reviewing proposals under HOLA, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews public and supervisory 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.¹⁵ In this evaluation, the Board considers a variety of information regarding capital adequacy 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 institution. In addressing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in light of their financial and managerial resources and the proposed business plan. The Board has consulted with the OCC and the Consumer Financial Protection Bureau (“CFPB”) regarding this proposal.

Applicants and EFC are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is an SLHC acquisition that is structured as an exchange of cash for shares followed by a merger.¹⁶ The asset quality, earnings, and liquidity of Applicants, EFC, and their subsidiary depository institutions are consistent with approval, and Applicants appear to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions’ operations. In addition, future prospects are considered consistent with approval.

¹⁴ EverBank has 10 physical branches in locations across Florida. Even assuming that all of the deposits of the resultant institution would be located in Florida, the resultant institution would control less than 5 percent of the total deposits in that state.

¹⁵ As of the date of this order and based on information provided by Applicants, Applicants meet the requirements of section 10(c)(9)(c) of HOLA and therefore are not required to obtain the Board’s prior approval to engage in any business activities resulting from the merger and acquisition of EFC and EverBank.

¹⁶ To effect the holding company merger, all outstanding shares of EFC will be converted into the right to receive cash from Applicants. Applicants have the resources to fund the proposed transaction.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.¹⁷ This consideration included an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of Applicants and TIAA FSB; their record of compliance with laws and regulations; and the record of the Applicants and TIAA FSB and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.¹⁸ The Board has reviewed the examination records of Applicants, EFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants; 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, as well as information provided by the commenters.

Applicants' existing risk-management program and their directors and senior management are considered to be satisfactory. The directors and senior executive officers of Applicants have knowledge of and experience in the banking and financial services sectors. Applicants have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-integration process for this proposal.

The Board also has considered Applicants' plans for implementing the proposal. Applicants plan to leverage much of EverBank's existing risk-management framework and program, compliance-management framework, and related corporate support functions, and these are considered satisfactory from a supervisory perspective. Applicants intend for EverBank's risk-management and compliance framework and program to serve as the operating framework and program at the resultant depository institution following the transaction. In addition, the management of Applicants, EFC, and their depository institution subsidiaries have the experience and resources to operate the combined organization in a safe and sound manner, and Applicants plan to integrate EverBank's existing management and personnel in a manner that augments Applicants' management.¹⁹

Based on all the facts of record, including the supervisory records of Applicants, EFC, and their subsidiary depository institutions; their managerial and operational resources; Applicants' plans for operating the institution after consummation; and the comments received on the proposal, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Applicants and EFC in combatting money laundering activities, are consistent with approval.

¹⁷ 12 CFR 238.15(b)(2).

¹⁸ See 12 U.S.C. § 1467a(e)(1)(B); 12 CFR 238.15(b)(2).

¹⁹ A commenter asserted that Applicants do not have sufficient banking experience to acquire EFC and EverBank. Applicants represent that management of the resultant depository institution would consist of banking professionals with extensive experience drawn from the current management of TIAA FSB and EverBank. For the reasons discussed above, management of both TIAA FSB and EverBank are considered satisfactory from a supervisory perspective.

The commenter also alleged that Applicants have improperly invested heavily in agricultural expansion in Brazil that contributed to the depletion of the Brazilian rainforest, which reflects poorly on management. Applicants represent that their investments in Brazil follow the U.N. Principles for Responsible Investment in Farmland. This allegation does not reflect on the competence, experience, or integrity of management with respect to the control and operation of a depository institution.

Convenience and Needs Considerations

In acting on a proposal under section 10(e) of HOLA, the Board considers the effect of the transaction on the convenience and needs of the communities to be served.²⁰ In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, 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 the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).²¹ 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,²² 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 expansionary proposals.²³

In addition, the Board considers the institutions’ 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 comments received on the proposal. The Board also may consider the institutions’ business models, their marketing and outreach plans, the combined organization’s plans following 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 TIAA FSB and EverBank, the fair lending and compliance records of both savings associations, the supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by Applicants, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

A commenter objected to the proposal alleging that, based on data reported under the Home Mortgage Disclosure Act (“HMDA”) for 2015, TIAA FSB lent only to white borrowers in the St. Louis, Missouri-Illinois Metropolitan Statistical Area (“St. Louis MSA”). The commenter also criticized the rate at which EverBank denied applications by African Americans in the Miami-Fort Lauderdale-West Palm Beach, Florida Metropolitan Statistical Area (“Miami MSA”) and the Tampa-St. Petersburg-Clearwater, Florida Metropolitan Statistical Area (“Tampa MSA”), based on 2015 HMDA data.

The Board also received comments from 10 community groups and nonprofit organizations in support of the proposal. Supporting commenters praised the community outreach efforts of both TIAA FSB and EverBank and expressed confidence that the proposal would allow the combined organization to expand its community development activities.

²⁰ 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).

²¹ 12 CFR 238.15(b)(3).

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

Businesses of Involved Institutions and Response to Comments

TIAA is a New York life insurance company focusing on consumers that work in not-for-profit fields, including academia, research, medicine, and government. TIAA is wholly owned by Overseers, a New York not-for-profit, non-stock membership corporation. TCT is a wholly owned subsidiary of TIAA and has no operations outside its ownership of TIAA FSB. TIAA FSB is a federal savings association that does not operate physical branches but offers deposit products, investment management and trust services, and residential real estate lending throughout the United States through an Internet platform under the brand name “TIAA Direct.”

EFC, a publicly traded Delaware corporation, operates primarily through EverBank. EverBank is a federal savings association that serves customers in Florida through 10 branches and customers throughout the United States through a nationwide Internet platform. EverBank offers consumer products including deposit services, loans, residential lending, and loan servicing, as well as products targeted primarily to business customers, such as business deposit services, commercial real estate lending, lender finance, equipment finance and leasing, and mortgage warehouse financing. EverBank operates a home lending network in all 50 states and markets to customers nationwide through its Internet platform.

Applicants assert that the allegations in the comment letter with respect to TIAA FSB do not fully represent TIAA FSB’s lending record, which consists of nationwide activity. Applicants noted that TIAA FSB does not operate any physical branches and markets to consumers nationwide through its Internet platform and other broad-based distribution channels, and therefore argue that lending data focused on a single market do not reflect TIAA FSB’s broader lending record or strategy. Applicants assert that the denial rates cited by the commenter are based on a small number of originations and do not take into account factors, such as credit history and existing debt levels, that TIAA FSB uses to underwrite loans.

With respect to the allegations related to EverBank, Applicants similarly assert that the denial rates cited by the commenter are based on a small number of applications and do not take into account legitimate underwriting factors, such as credit history and existing debt levels. Applicants assert that the denials underlying the data cited by the commenter were properly made because the applications did not satisfy EverBank’s underwriting criteria. Applicants also assert that lending data focused on operations in a small number of specific markets do not reflect EverBank’s broader lending record or strategy.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution’s performance in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the OCC and the CFPB.²⁴

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

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

needs of its entire community, including LMI neighborhoods.²⁵ 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 lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development 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 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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's loans in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including for home mortgage loans the number and amount of loans to low-, moderate-, middle-, and upper-income individuals;²⁶ (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

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.²⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of TIAA FSB

TIAA FSB was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of January 13, 2014 (the "TIAA FSB Evaluation").²⁸ TIAA FSB received "Low Satisfactory" ratings for the Lending Test and the Service Test and a "High Satisfactory" rating for the Investment Test.

²⁵ 12 U.S.C. § 2906.

²⁶ Examiners also consider the number and amount 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).

²⁷ Other data 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.

²⁸ The TIAA FSB Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2012, through December 31, 2013, for home mortgage loans originated and purchased. Examiners reviewed community development activities from August 21, 2010, through June 2, 2014. The assessment area reviewed was defined as the city of St. Louis, St. Charles, St. Louis, and Warren counties in Missouri, and Madison and St. Clair counties in Illinois. These five counties and the city of St. Louis are contiguous geographies located within the St. Louis MSA.

Examiners found that TIAA FSB's lending levels reflected adequate responsiveness to the credit needs of TIAA FSB's assessment area. Examiners also noted that the geographic distribution of home mortgage loans reflected good penetration and that the distribution of home mortgage loans among borrowers of different income levels reflected excellent penetration. Examiners also found that TIAA FSB's geographic distribution of home refinance loans was excellent. Examiners further found that TIAA FSB had a relatively high level of community development loans, including loans to a low-income credit union focused specifically on meeting the financial service needs of underserved communities. Examiners noted that TIAA FSB's loan-product offering was varied and that TIAA FSB made use of several community development financial institutions that supported affordable housing and community development projects in order to provide innovative and flexible credit products to address credit needs in its assessment area.

Examiners noted that TIAA FSB purchased a significant level of qualifying mortgage-backed securities and that its parent company, TIAA, had a significant level of qualified investments to minority-owned institutions and community development financial institutions. In addition, examiners noted that TIAA FSB made a donation to a St. Louis credit union that met an identified community need.

Examiners concluded that TIAA FSB's delivery systems were accessible to geographies and individuals of different income levels. Examiners noted that TIAA FSB was an Internet-based depository institution with no traditional banking offices or deposit-taking ATMs, instead relying on the Internet, mobile banking, and telephone banking for loans and deposit accounts. Examiners stated that it was unproven whether or not these alternative delivery systems specifically met the need of LMI families in TIAA FSB's assessment area. Examiners found that TIAA FSB provided an adequate level of community development services. Examiners noted that TIAA FSB's community development services included credit and homebuyer seminars primarily targeted toward LMI individuals residing in its assessment area and financial literacy training to LMI students within its assessment area.

TIAA FSB's Efforts Since the 2014 CRA Evaluation

TIAA FSB represents that since the TIAA FSB Evaluation, it has originated or renewed high-impact community development loans and has developed partnerships with a variety of community organizations in its assessment area to facilitate affordable housing and other loans to LMI individuals. TIAA FSB also represents that it has purchased mortgage-backed securities collateralized by mortgages to LMI individuals and is participating in a five-year Enterprise Community Impact note.

CRA Performance of EverBank

EverBank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of October 14, 2015 (the "EverBank Evaluation").²⁹ EverBank received "High Satisfactory" ratings for the Lending, Investment, and Service Tests.

Examiners found that EverBank had an overall adequate dispersion of loans in geographies of different income levels. Although the examiners considered EverBank's geographic distribution of home purchase loans to be good and its geographic distribution of home improvement loans to be excellent, they found EverBank's geographic distribution of home

²⁹ The EverBank Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2012, through December 31, 2014, for home mortgage loans and small business loans. Examiners reviewed community development activities from May 1, 2012, through August 31, 2015. The assessment area receiving a full-scope review for the EverBank Evaluation was defined as Duval County, Florida, within the Jacksonville, Florida Metropolitan Statistical Area.

refinance loans to be poor. Examiners noted that EverBank had a good distribution of loans to borrowers of different income levels. Examiners further found a good level of geographic distribution of lending for loans to small businesses and a good level of overall lending activity and community development lending. Examiners noted that EverBank's community development loans supported affordable housing initiatives, economic development in EverBank's assessment area, and the revitalization or stabilization of LMI census tracts.

Examiners found EverBank to have community development investments that exhibited excellent responsiveness to community development needs within its assessment area. Examiners noted that EverBank's investments included government-sponsored mortgage-backed securities, in which the underlying mortgages were to LMI borrowers. Investments also included grants to the local Habitat for Humanity and other affordable housing organizations as well as a contribution to a financial literacy program targeted to high school students in LMI communities.

Examiners noted that telephone and Internet are the primary means used by EverBank to deliver services to its customers. Examiners found that EverBank's physical branches were reasonably accessible to people and geographies of different income levels and that no significant differences in hours existed among branches located in geographies of different income levels. Examiners found that EverBank offered an adequate level of services through alternate delivery systems. Examiners also found that EverBank's record of opening or closing offices had not adversely impacted access to banking services. Examiners stated that EverBank provided an excellent level of community development services that were highly responsive to community needs. Examiners specifically highlighted EverBank's efforts to provide technical assistance on financial and banking-related matters to community groups, which represented an excellent responsiveness to the affordable housing and community development needs within EverBank's assessment area.

EverBank's Efforts Since the 2015 CRA Evaluation

Applicants represent that since the EverBank Evaluation, EverBank has continued to provide products and services tailored to the convenience and needs of LMI individuals. Applicants represent that EverBank continues to originate and purchase community development loans within its assessment area. Applicants also represent that EverBank has made qualified investments within its assessment area, including investments in affordable housing units, scholarship programs serving low-income students, and grants to community organizations that provide affordable housing, community services, and education opportunities. Applicants represent that EverBank continues to participate in affordable lending programs and that EverBank supports the mission of Habitat for Humanity both by originating loans for the program and providing continuing mortgage-servicing support for loans owned by Habitat for Humanity organizations, as well as for loans sold by Habitat for Humanity organizations to other investors. EverBank also offers banking products, such as affordable savings and checking accounts, designed to provide an array of services throughout its assessment area at a minimal cost, as well as additional lending products and services aimed at extending banking services to smaller savers and borrowers and an online business-payroll service for small businesses.

Views of the OCC and the CFPB

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of TIAA FSB and EverBank. The Board also consulted with the CFPB regarding EverBank's record of compliance with consumer protection laws. The OCC approved the bank merger underlying this proposal. The OCC

was provided with the comments on the proposal received by the Board and considered them in connection with its review of the bank merger application.

The Board has considered the results of a recent consumer compliance examination of TIAA FSB conducted by OCC examiners, which included a review of TIAA FSB's policies and procedures for complying with fair lending and other consumer compliance laws.

The Board also has considered the results of a recent consumer compliance examination of EverBank conducted by OCC examiners, which included reviews of EverBank's consumer compliance policies and procedures, internal controls, compliance testing, monitoring, training, and the compliance-risk assessment process. Examiners also reviewed third-party risk management; management in response to changes in laws, regulations, systems, and products; due diligence for new products and services; and areas of potential unfair or deceptive acts or practices.

The Board has taken these consultations into account in evaluating this proposal, including in considering whether Applicants have the experience and resources to ensure that the organization would effectively implement policies and programs that would allow the combined organization to effectively serve the credit needs of all the communities within the firm's assessment areas.

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. Applicants represent that the resultant depository institution will leverage the strengths of TIAA FSB and EverBank to focus on meeting community needs throughout the geographic footprint of the combined savings association. Planned efforts include, but are not limited to, financing for acquisition, renovation, or construction of affordable housing for sale or rent to LMI individuals or families; revolving loan funds for nonprofit organizations for the purpose of acquiring, rehabilitating, and selling affordable homes; financing for the acquisition, renovation, or construction of affordable multifamily housing; loans for owner-occupied, nonresidential properties owned by community development organizations; investments in pre-development or permanent financing for affordable housing and community development projects that benefit LMI geographies; working capital lines of credit to community development corporations; financial literacy programs related to credit repair and foreclosure alternatives; and direct investments in nonprofit programs and related community services. Applicants represent that as a result of the proposed transaction, the resultant depository institution will have the capability to offer a wider array of banking products through expanded distribution channels. These banking products include credit cards and small business loans, which TIAA FSB does not currently offer to its customers, as well as broader residential lending and commercial lending operations.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of TIAA FSB and EverBank under the CRA; their records of compliance with fair lending and other consumer protection laws; consultations with the OCC and the CFPB; confidential supervisory information; information provided by Applicants; the public comments 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 concludes that the convenience and needs factor is consistent with approval.

Effect of the Transaction on the Savings Association and Insurance Risk to the Deposit Insurance Fund

In acting on a proposal under section 10(e) of HOLA, the Board considers the likely effect of the transaction on the savings association and any insurance risk to the Deposit Insurance Fund.³⁰ As discussed above, the financial and managerial resources and the future prospects of the combined organization are consistent with approval. The Board has considered the likely effect of the transaction on the resultant depository institution and believes that it is consistent with approval. In view of Applicants' and EFC's current resources, capital, and future prospects; the significant financial and other resources being devoted to support the proposed combined organization; the managerial resources of Applicants, EFC, TIAA FSB, and EverBank; and the likely effect of the transaction on the proposed combined organization, the Board, after consulting with the Federal Deposit Insurance Corporation, believes that the proposal would not appear likely to have any material effect on the insurance risk to the Deposit Insurance Fund.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.³¹ 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 HOLA. The Board's approval is specifically conditioned on compliance by Applicants with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the 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 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 later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of Boston, acting pursuant to delegated authority.

By order of the Board of Governors, effective June 7, 2017.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Powell and Brainard.

³⁰ 12 U.S.C. § 1467a(e)(2).

³¹ A commenter requested that the Board hold public hearings or meetings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. 12 CFR 238.14(e) and 262.3(e). 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 written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied. In addition, a 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.