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Legal Developments: First Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

First Citizens BancShares, Inc.
Raleigh, North Carolina

Order Approving the Acquisition of Additional Shares of a Bank
FRB Order No. 2017-01 (January 11, 2017)

First Citizens BancShares, Inc. ("First Citizens"), Raleigh, North Carolina, 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 Act[2] to increase its ownership interest from 4.9 percent to 9.0 percent of the voting shares of Carter Bank & Trust ("Carter Bank"), Martinsville, Virginia.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 48421 (July 25, 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.

First Citizens, which is part of the Holding F&L Family Chain,[4] has consolidated assets of approximately $32.2 billion and is the 54th largest insured depository organization in the United States, controlling approximately $27.3 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] First Citizens controls First-Citizens Bank & Trust Company ("First Citizens Bank"), which operates in Arizona, California, Colorado, Florida, Georgia, Kansas, Maryland, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and the District of Columbia. First Citizens Bank is the fourth largest insured depository institution in North Carolina, controlling deposits of approximately $14.0 billion, which represent 4.0 percent of the total deposits of insured depository institutions in that state.[6] First Citizens Bank also is the 15th largest insured depository institution in Virginia, controlling

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1 12 U.S.C. § 1841 *et seq.*

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 In addition to First Citizens, the Holding F&L Family Chain controls two other bank holding companies, Southern BancShares (N.C.), Inc. ("Southern"), Mount Olive, and Fidelity BancShares (N.C.), Inc. ("Fidelity"), Fuquay-Varina, both of North Carolina.

5 National asset and deposit data are as of June 30, 2016, and state deposit data are as of June 30, 2015, unless otherwise noted.

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

deposits of approximately $1.4 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Carter Bank, with total assets of approximately $4.9 billion, is the 204th largest insured depository organization in the United States, controlling approximately $4.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Carter Bank operates in North Carolina and Virginia. Carter Bank is the tenth largest insured depository institution in Virginia, controlling deposits of approximately $3.9 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. Carter Bank also is the 35th largest insured depository institution in North Carolina, controlling deposits of approximately $488.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Noncontrolling Investment

First Citizens currently owns approximately 4.9 percent of the voting shares of Carter Bank and proposes to increase its ownership interest up to 9.0 percent of Carter Bank's voting shares. First Citizens has represented that it does not propose to control or exercise a controlling influence over Carter Bank as a result of this proposal.[7]

To help ensure it would not control Carter Bank for purposes of the BHC Act, First Citizens provided the Board with commitments that are intended to ensure that First Citizens would not exercise or seek to exercise a controlling influence over Carter Bank for purposes of the BHC Act ("Passivity Commitments").[8] For example, First Citizens has committed not to exercise or attempt to exercise a controlling influence over the management or policies of Carter Bank; not to have or seek to have any employee or representative of First Citizens or its affiliates serve as an officer, agent, or employee of Carter Bank; and not to seek or accept representation on the board of directors of Carter Bank. First Citizens also has committed not to enter into any agreement with Carter Bank that substantially limits the discretion of Carter Bank's management over major policies or decisions. In addition, First Citizens has committed not to acquire, or seek to acquire, confidential or nonpublic financial information from or about Carter Bank.

Based on these considerations and all the facts of record, the Board concludes that First Citizens would not acquire control of, or have the ability to exercise a controlling influence over, Carter Bank. The Board notes that the BHC Act requires First Citizens to receive the Board's approval before directly or indirectly acquiring any additional shares of Carter Bank or attempting to exercise a controlling influence over Carter Bank.[9]

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 relevant banking market, unless the anti-competitive effects of the proposal are clearly

[7] The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank. *See*, *e.g.*, *Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) (acquiring up to 24.89 percent of the voting shares of a bank); *SunBanks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) (acquiring up to 15 percent of the voting shares of a bank).

[8] The commitments made by First Citizens are set forth in appendix A.

[9] *See* 12 U.S.C. § 1842(a)(3).

outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[10]

First Citizens Bank, its affiliates, and Carter Bank compete directly in 32 banking markets in North Carolina and Virginia.[11] The Board has considered the competitive effects of the proposal in the banking markets in which First Citizens Bank, its affiliates, and Carter Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that First Citizens, its affiliates, and Carter Bank would control;[12] the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] other characteristics of the markets; and, as discussed below, the noncontrolling nature of the proposed investment, as well as the Passivity Commitments First Citizens made to the Board with respect to Carter Bank.

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in 28 banking markets. On consummation, 11 banking markets would remain highly concentrated; 15 banking markets would remain moderately concentrated; and two banking markets would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets from a full merger between First Citizens and Carter Bank would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in most of these banking markets.[14]

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Galax, Martinsville, and Mecklenburg banking markets, all in Virginia, and the Danville, Virginia–North Carolina, banking market warrant a detailed review. In these markets, the concentration levels if First Citizens and Carter Bank were considered a combined organization on consummation, would exceed the thresholds in the DOJ Bank Merger Guidelines and

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10 12 U.S.C. § 1842(c)(1).

11 For purposes of its competitive analysis, the Board aggregates affiliate holding companies as if they were a single holding company. *See*, *e.g.*, *First National Bank Shares, Ltd.*, 80 *Federal Reserve Bulletin* 159 (1994). Accordingly, First Citizens is aggregated with Southern and Fidelity, the other two bank holding companies that are part of the Holding F&L Family Chain, for purposes of examining the competitive effects of the proposed investment in Carter Bank.

12 Deposit and market share data are as of June 30, 2015, 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 market share calculations on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

13 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), www.justice.gov/opa/pr/2010/August/10-at-938.html.

14 These banking markets and the competitive effects of the proposal in these markets are described in appendix B.

would result in the market deposit share of First Citizens, its affiliates, and Carter Bank equaling or exceeding 35 percent when using initial competitive screening data.

The Board previously has stated that noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act. The Board has noted that a company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control.[15] Accordingly, the Board examines the specific facts of each case to determine whether a minority investment in a competitor would result in significant adverse competitive effects in a banking market.[16]

Danville, Virginia–North Carolina, Banking Market

First Citizens Bank and its affiliate, Fidelity, would be the third largest depository institution in the Danville banking market, controlling approximately $225.4 million in deposits, which represent 12.5 percent of market deposits.[17] Carter Bank is the second largest depository institution in the market, controlling approximately $534.8 million in deposits, which represent 29.6 percent of market deposits. If considered a combined organization on consummation of the proposal, First Citizens Bank and Carter Bank would be the largest depository institution in the Danville banking market, controlling approximately $760.2 million in deposits, which would represent approximately 42.1 percent of market deposits. The HHI in this market would increase 740 points, from 2194 to 2934.

Three credit unions exert a competitive influence in the Danville banking market. Each institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[18] In addition to First Citizens Bank and Carter Bank, eight other depository institutions compete in the Danville market, including one competitor with more than 30 percent of market deposits.

Galax, Virginia, Banking Market

First Citizens Bank is the sixth largest depository institution in the Galax banking market, controlling approximately $30.3 million in deposits, which represent 3.6 percent of market deposits.[19] Carter Bank is the largest depository institution in the market, controlling

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[15] *See*, *e.g.*, *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990).

[16] *See*, *e.g.*, *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052 (1995); *Mansura Bancshares, Inc.* 79 *Federal Reserve Bulletin* 37 (1993); *SunBanks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985).

[17] The Danville banking market is defined as the independent city of Danville, Virginia; Pittsylvania County, Virginia; and the Dan River, Milton, Pelham, and Yanceyville townships in Caswell County, North Carolina.

[18] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.*, (June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2d Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006). Here, URW Community Federal Credit Union, Beacon Credit Union, and Piedmont Credit Union control approximately $92.0 million in deposits in that market that, on a 50 percent weighted basis, represent approximately 4.9 percent of market deposits. After inclusion of these deposits, First Citizens would control approximately 40.1 percent of market deposits, and the HHI would increase by 670 points to 2667.

[19] The Galax banking market is defined as the independent city of Galax, Grayson County, and the portion of Carroll County north of the Blue Ridge Parkway, all in Virginia.

approximately $286.2 million in deposits, which represent 34.4 percent of market deposits. If considered a combined organization on consummation of the proposal, First Citizens Bank and Carter Bank would be the largest depository institution in the Galax banking market, controlling approximately $316.5 million in deposits, which would represent approximately 38.1 percent of market deposits. The HHI in this market would increase 251 points, from 2490 to 2741.

One credit union exerts a competitive influence in the Galax banking market. The institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[20] In addition to First Citizens Bank and Carter Bank, seven other depository institutions would compete in the Galax market, including two competitors with more than 15 percent of market deposits.

Martinsville, Virginia–North Carolina, Banking Market

First Citizens' affiliate, Fidelity, is the sixth largest depository institution in the Martinsville banking market, controlling approximately $50.4 million in deposits, which represent 3.3 percent of market deposits.[21] Carter Bank is the largest depository institution in the market, controlling approximately $660.8 million in deposits, which represent 43.6 percent of market deposits. If considered a combined organization on consummation of the proposal, Fidelity and Carter Bank would be the largest depository institution in the Martinsville banking market, controlling approximately $711.2 million in deposits, which would represent approximately 46.9 percent of market deposits. The HHI in this market would increase 290 points, from 2691 to 2981.

One credit union exerts a competitive influence in the Martinsville banking market. This institution also offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.[22] In addition to Fidelity and Carter Bank, nine other depository institutions would compete in the Martinsville market, including two competitors with more than 12 percent of market deposits.

Mecklenburg, Virginia, Banking Market

First Citizens Bank is the largest depository institution in the Mecklenburg banking market, controlling approximately $274.8 million in deposits, which represent 28.6 percent of market deposits.[23] Carter Bank is the fifth largest depository institution in the market, controlling approximately $90.3 million in deposits, which represent 9.4 percent of market deposits. If considered a combined organization on consummation of the proposal, First Citizens Bank and Carter Bank would be the largest depository institution in the Mecklenburg banking market, controlling approximately $365.1 million in deposits, which would represent approximately 38.0 percent of market deposits. The HHI in this market

[20] Self-Help Credit Union controls approximately $14.8 million in deposits in that market that, on a 50 percent weighted basis, represent approximately 1.8 percent of market deposits. After inclusion of these deposits, First Citizens would control approximately 37.4 percent of market deposits, and the HHI would increase by 242 points to 2649.

[21] The Martinsville banking market is defined as the independent city of Martinsville, Virginia; Henry County, Virginia; and Patrick County, Virginia (excluding the Dan River District).

[22] ValleyStar Credit Union controls approximately $77.7 million in deposits in that market that, on a 50 percent weighted basis, represent approximately 4.9 percent of market deposits. After inclusion of these deposits, First Citizens would control approximately 44.6 percent of market deposits, and the HHI would increase by 262 points to 2721.

[23] The Mecklenburg banking market is defined as Mecklenburg, Lunenburg and Brunswick Counties, all in Virginia.

would increase 538 points, from 1839 to 2377. In addition to First Citizens Bank and Carter Bank, six other depository institutions would compete in the Mecklenburg market, including three competitors with more than 10 percent of market deposits.

Additional Considerations Regarding Competition

After considering the competitive influence of certain credit unions and accounting for other competitors in the Danville, Galax, Martinsville, and Mecklenburg banking markets, First Citizens' proposal continues to exceed the DOJ Bank Merger Guidelines. However, the Board has considered additional factors that, in this case, indicate that the proposal is not likely to have a significantly adverse effect on competition in the Danville, Galax, Martinsville, and Mecklenburg banking markets.[24] First Citizens' investment in Carter Bank is limited to less than 10 percent of Carter Bank's voting shares, and Carter Bank's directors and executive officers, including the bank's long-tenured chief executive officer, own 24.9 percent of Carter Bank's common stock. As noted, First Citizens also has provided the Board with Passivity Commitments that are designed to limit the ability of First Citizens to use its investment in Carter Bank to exert a controlling or anti-competitive influence over Carter Bank.

While the Board previously and consistently has found that a noncontrolling relationship may still raise competitive issues under the BHC Act, it is significant that, in this case, First Citizens has provided additional commitments that help ameliorate the potential that this proposal will allow collusion or other anti-competitive behavior. In particular, First Citizens has committed not to acquire, or seek to acquire, any confidential or nonpublic financial information about or from Carter Bank. Further, there are no officer or director interlocks between the institutions through which First Citizens could acquire confidential or other nonpublic information about Carter Bank. These limitations restricting First Citizens' access to confidential information, when combined with the other restrictions on First Citizens' ability to exercise a controlling influence over Carter Bank, significantly reduce the potential that First Citizens may engage in anti-competitive or collusive behavior in any relevant banking market. Thus First Citizens has mitigated the potential that it may influence the behavior of Carter Bank and the potential that First Citizens may change its own behavior in an anti-competitive way based on advance or confidential knowledge about the plans, operations, or policies of Carter Bank. These restrictions, combined with the other limitations described above, mitigate the concerns that this proposal would likely have significantly adverse effects on competition in the Danville, Galax, Martinsville, and Mecklenburg banking markets.

The DOJ also 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, including the limited nature of First Citizens' investment, the Passivity Commitments, and First Citizens' commitment not to acquire, or seek to acquire, confidential or nonpublic financial information about or from Carter Bank, 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 banking markets in which First Citizens, its affiliates, and Carter Bank compete directly or in any other relevant

[24] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See NationsBank Corporation*, 84 *Federal Reserve Bulletin* 129 (1998).

banking market. Thus, the Board finds competitive considerations to be 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 public and supervisory information regarding capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources.

First Citizens and First Citizens Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction would be funded from First Citizens' existing cash reserves. The asset quality, earnings, and liquidity of First Citizens is consistent with approval, and First Citizens appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of First Citizens, First Citizens Bank, and Carter Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Citizens, 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.

First Citizens and First Citizens Bank are each considered to be well managed. First Citizens' directors and senior executive officers 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.

Based on all the facts of record, including First Citizens' supervisory record and managerial and operational resources, 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 First Citizens and Carter Bank 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.[25] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be

[25] 12 U.S.C. § 1842(c)(2).

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"). 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 record 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 First Citizens Bank and Carter Bank, the fair lending and compliance records of both banks, confidential supervisory information, and information provided by First Citizens.

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, as well as information and views provided by the appropriate federal supervisors.[28]

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.[29] 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 the Home Mortgage Disclosure Act of 1975, 12 U.S.C. § 2801 *et seq*. in addition to small business, small farm, and community development loan

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

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

[29] 12 U.S.C. § 2906.

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 company's lending, including the proportion and dispersion 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, the number and amount of home mortgage 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.

CRA Performance of First Citizens Bank

First Citizens Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of May 28, 2013 ("First Citizens Bank Evaluation").[31] First Citizens Bank received a "High Satisfactory" rating for each of the Lending, Investment, and Service Tests.

Examiners found that First Citizens Bank's lending levels reflected good responsiveness to community credit needs. According to examiners, the bank's geographic distribution of loans reflected good penetration throughout the bank's assessment areas. Examiners also found that the First Citizens Bank's lending to borrowers reflected a good distribution among businesses of different sizes and an adequate distribution among retail customers of different incomes. Examiners noted that First Citizens Bank used flexible lending practices in order to serve assessment area credit needs. Examiners also found that First Citizens Bank originated a relatively high level of community development loans and that both the number and dollar volume of community development loans increased from First Citizens Bank's previous CRA evaluation.

Examiners found that First Citizens Bank had an excellent level of qualified community development investments, grants, and donations. Examiners noted that the bank exhibited good responsiveness to credit and community economic development needs and that each of the bank's investments was responsive to an identified need, particularly those involving the bank's position in the Community Affordable Housing Equity Corporation. The bank also used innovative and complex investments to support community development initiatives.

[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] The First Citizens Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), community development loans, community development investments and services, and delivery systems for the bank's products and services from October 19, 2009, through May 28, 2013. The First Citizens Bank Evaluation covered First Citizens Bank's 59 assessment areas located in 15 states and two multistate metropolitan statistical areas ("MSAs"): Arizona; California; Colorado; Florida; Georgia; Maryland; New Mexico; North Carolina; Oklahoma; Oregon; Tennessee; Texas; Virginia; Washington; West Virginia; the Kansas City, Missouri–Kansas, MSA; and the Washington–Arlington–Alexandria, District of Columbia–Virginia–Maryland–West Virginia, MSA. The First CitizensBank Evaluation included a full-scope review of 33 of these assessment areas, including both multistate MSAs. A limited-scope review was conducted in the remaining 26 assessment areas. The FirstCitizens Bank Evaluation was released in June 2014.

Examiners also noted that First Citizens Bank's delivery systems were accessible to the bank's assessment areas. Examiners further noted that the services and business hours offered by First Citizens Bank did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or individuals. Examiners noted that the bank provided a relatively high level of community development services that benefited organizations throughout its assessment areas, including for organizations that focus on economic development and revitalization, affordable housing, small business development, financial education, services for at-risk youth, and basic human needs for LMI individuals and areas.

First Citizens Bank's Efforts since the First Citizens Bank Evaluation

First Citizens represents that First Citizens Bank has continued its commitment to serve the needs of LMI individuals and geographies and small businesses in its communities. First Citizens asserts that First Citizens Bank offers a variety of products and services designed to meet the needs of LMI and minority borrowers. In particular, First Citizens represents that First Citizens Bank has made a number of home mortgage loans and products available to LMI and first-time homebuyers. In addition, First Citizens represents that First Citizens Bank has remained active in community development and small business lending. First Citizens also notes that First Citizens Bank has continued its participation in community development investments and that the bank provides a high level of community development services, including by providing time and expertise to various community organizations and for homebuyer and financial literacy seminars.

CRA Performance of Carter Bank

Carter Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of December 15, 2014 ("Carter Bank Evaluation").[32] Carter Bank received "High Satisfactory" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.[33]

Examiners noted that Carter Bank's overall lending activity reflected good responsiveness to its assessment area credit needs. Examiners also found that the bank's geographic distribution of loans showed good penetration throughout its assessment areas. Examiners noted that the bank's lending to borrowers reflected a good distribution among businesses of different sizes and retail customers of different incomes. Examiners also found that the bank originated a relatively high level of community development loans.

Examiners noted that Carter Bank had an adequate level of qualified community development investments and grants. Examiners also found that the bank exhibited adequate responsiveness to credit and community economic development needs through its investments and contributions. Examiners noted that Carter Bank occasionally used innovative

[32] The Carter Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), and qualified investments from December 27, 2011, through December 14, 2014.

[33] The Carter Bank Evaluation included a full-scope assessment review of the bank's assessment areas in the following geographies: the Danville, Virginia, MSA; the Lynchburg, Virginia, MSA; the Roanoke, Virginia, MSA; the Virginia Non–MSA; the Durham–Chapel Hill, North Carolina, MSA; the Greensboro–High Point, North Carolina, MSA; and the North Carolina Non–MSA. A limited-scope review was performed in the Blacksburg–Christiansburg–Radford, Virginia, MSA; Charlottesville, Virginia, MSA; the Harrisonburg, Virginia, MSA; the Kingsport–Bristol–Bristol, Tennessee–Virginia, MSA; the Washington–Arlington–Alexandria, District of Columbia–Virginia–Maryland–West Virginia, Metropolitan Division; the Burlington, North Carolina, MSA; the Fayetteville, NorthCarolina, MSA; the Goldsboro, NorthCarolina, MSA; the Greenville, North Carolina, MSA; the Hickory–Lenoir–Morganton, North Carolina MSA; the Raleigh, North Carolina, MSA; and the Winston–Salem, NorthCarolina, MSA.

and/or complex investments to support community development initiatives in its assessment areas.

Examiners found that the bank's delivery systems were readily accessible to essentially all portions of the bank's assessment areas. Examiners also noted the bank's services and business hours did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or individuals. Examiners found that the bank provided a relatively high level of community development services that benefit organizations throughout its assessment areas, including for economic development and revitalization, affordable housing, small business development, financial education, services for at-risk youth, and basic human needs for LMI individuals and areas.

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 First Citizens, 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."[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 has considered information relevant to risks to the stability of the U.S. banking or financial system. In this case, the proposed acquisition of a noncontrolling interest in Carter Bank is not a significant expansion by First Citizens and would have a de minimis impact on First Citizens's systemic footprint. The value of the additional shares that First Citizens proposes to purchase is approximately $14.0 million. The Board generally

[34] Dodd-Frank Act § 604(d), 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).

presumes that an acquisition of less than $2 billion in assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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. 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 First Citizens 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 Richmond, acting under delegated authority.

By order of the Board of Governors, effective January 11, 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 A

First Citizens BancShares, Inc. ("First Citizens"), Raleigh, together with Southern Bancshares (N.C.), Inc. ("Southern"), Mount Olive, and Fidelity Bancshares (N.C.), Inc. ("Fidelity"), Fuquay-Varina, all of North Carolina, and their subsidiaries and affiliates (each a "First Citizens Acquirer" and collectively, the "First Citizens Acquirer Group"), will not, without the prior approval of the Board of Governors of the Federal Reserve System (the "Board") or its staff, directly or indirectly:

1. Exercise or attempt to exercise a controlling influence over the management or policies of Carter Bank & Trust ("Carter Bank"), Martinsville, Virginia, or any of its subsidiaries;
2. Have or seek to have a representative of the First Citizens Acquirer Group serve on the board of directors of Carter Bank or any of its subsidiaries;
3. Have or seek to have any employee or representative of the First Citizens Acquirer Group serve as an officer, agent, or employee of Carter Bank or any of its subsidiaries;
4. Take any action that would cause Carter Bank or any of its subsidiaries to become a subsidiary of the First Citizens Acquirer Group;
5. Own, control, or hold with power to vote securities that (when aggregated with securities that the executive officers and directors of the First Citizens Acquirer Group own,

control, or hold with power to vote) represent 15.0 percent or more of any class of voting securities of Carter Bank or any of its subsidiaries, but First Citizens will not own, control, or hold with power to vote securities that represent more than 9.0 percent of any class of voting securities of Carter Bank or any of its subsidiaries;

6. Own or control equity interests that would result in the combined voting and nonvoting equity interests of the First Citizens Acquirer Group and its executive officers and directors to equal or exceed 15.0 percent of the total equity capital of Carter Bank or any of its subsidiaries, but First Citizens will not own or control equity interests that would result in the combined voting and nonvoting equity interests of First Citizens that exceed 9.0 percent of the total equity capital of Carter Bank or any of its subsidiaries;
7. Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management or board of directors of Carter Bank or any of its subsidiaries;
8. Enter into any agreement with Carter Bank or any of its subsidiaries that substantially limits the discretion of Carter Bank's management over major policies and decisions, including but not limited to, policies or decisions about employing and compensating executive officers; engaging in new business lines; raising additional debt or equity capital; merging or consolidating with another firm; or acquiring, selling, leasing, transferring, or disposing of material assets, subsidiaries, or other entities;
9. Solicit or participate in soliciting proxies with respect to any matter presented to the shareholders of Carter Bank or any of its subsidiaries;
10. Dispose or threaten to dispose (explicitly or implicitly) of equity interests of Carter Bank or any of its subsidiaries in any manner as a condition or inducement of specific action or non-action by Carter Bank or any of its subsidiaries; or
11. Enter into any other banking or nonbanking transactions with Carter Bank or any of its subsidiaries, except that the First Citizens Acquirer Group may establish and maintain deposit accounts with Carter Bank, provided that the aggregate balance of all such deposit accounts does not exceed $500,000 and that the accounts are maintained on substantially the same terms as those prevailing for comparable accounts of persons unaffiliated with Carter Bank.
12. Acquire, or seek to acquire, any confidential or nonpublic financial information of Carter Bank or any of its subsidiaries. The First Citizens Acquirer Group also confirms that there are no legal, contractual, or statutory provisions that would allow it or its subsidiaries to have any access to financial information of Carter Bank or its subsidiaries beyond the information available to all shareholders.

Each First Citizens Acquirer understands that these commitments constitute conditions imposed in writing in connection with the Board's findings and decisions in First Citizens' application to acquire up to 9.0 percent of Carter Bank, pursuant to section 3 of the Bank Holding Company Act of 1956, as amended ("BHC Act"), and the Board's Regulation Y, and as such, may be enforced in proceedings under applicable law. Nothing in these commitments releases the First Citizens Acquirer Group from compliance with the BHC Act and the Board's regulations thereunder for any subsequent acquisition or increase in the percentage ownership of any class of voting shares of Carter Bank.

Appendix B

First Citizens Bank/Carter Bank Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Washington, DC– District of Columbia–Maryland–Virginia–West Virginia— Washington, DC; Charles, Calvert, 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 all in Virginia; the Virginia cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and Jefferson County, West Virginia.						
First Citizens	56	$64.1M	0			
Carter Bank	44	$171.0M	0.1			
First Citizens Post-Consummation	38	$235.1M	0.1	993	0	80
Charlotte, North Carolina–South Carolina—Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union Counties, all in North Carolina; Lancaster and York Counties, both in South Carolina; the city of Mooresville and the townships of Davidson and Coddle Creek in Iredell County, North Carolina; the townships of Atwell and China Grove in Rowan County, North Carolina; and the King's Mountain township in Cleveland County, North Carolina.						
First Citizens	5	$2.0B	0.9			
Carter Bank	37	$27.1M	0			
First Citizens Post-Consummation	5	$2.0B	0.9	5829	0	41
Durham–Chapel Hill, North Carolina–Chatham, Durham, Orange, and Person Counties, all in North Carolina.						
First Citizens	6	$469.2M	4.2			
Carter Bank	15	$48.8M	0.4			
First Citizens Post-Consummation	6	$518.0M	4.7	1819	4	17
Fayetteville, North Carolina[1] —Cumberland and Hoke Counties, both in North Carolina; and the Anderson Creek, Barbeque, Johnsonville, and Stewarts Creek townships in Harnett County, North Carolina.						
First Citizens	2	$533.2M	17.4			
Carter Bank	10	$15.2M	0.5			
First Citizens Post-Consummation	2	$548.4M	17.9	1940	17	13
Goldsboro, North Carolina[2] —Wayne County, North Carolina; and the Faison, Wolfscrape, Glisson, and Albertson townships in Duplin County, North Carolina.						
First Citizens	2	$377.7M	26.2			
Carter Bank	9	$3.7M	0.3			
First Citizens Post-Consummation	2	$381.4M	26.5	2538	13	9
Greensboro–High Point, North Carolina[1] — Davidson, Guilford, Randolph, and Rockingham Counties, all in North Carolina.						
First Citizens	7	$849.2M	5.9			
Carter Bank	15	$195.8M	1.4			
First Citizens Post-Consummation	7	$1.0B	7.3	1078	16	21
Greenville, North Carolina[1] —Pitt, Beaufort, and Greene (excluding the Shine, Jason, and Hookerton townships) Counties, all in North Carolina.						
First Citizens	1	$641.2M	21.9			
Carter Bank	13	$3.7M	0.1			
First Citizens Post-Consummation	1	$644.9M	22	1536	6	14
Hickory, North Carolina—Alexander, Burke, Caldwell, and Catawba Counties, all in North Carolina.						
First Citizens	3	$613.1M	15.4			
Carter Bank	9	$50.8M	1.3			
First Citizens Post-Consummation	3	$663.9M	16.7	1591	39	15
Mount Airy, North Carolina—Virginia – Surry County, North Carolina; the Dan River district in Patrick County, Virginia; and the portion of Carroll County, Virginia, south of the Blue Ridge Parkway.						
First Citizens	5	$98.5M	8			
Carter Bank	9	$35.9M	2.9			
First Citizens Post-Consummation	4	$134.4M	11	1651	47	9
Raleigh, North Carolina[3] —Franklin, Granville, Johnston, Wake, and Harnett (excluding the Anderson Creek, Barbeque, Johnsonville, and Stewarts Creek townships), Counties, all in North Carolina.						

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Appendix B—*continued*

First Citizens Bank/Carter Bank Banking Markets
Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
First Citizens	3	$3.3B	12.9			
Carter Bank	27	$12.1M	0.1			
First Citizens Post-Consummation	3	$3.3B	13	1372	1	31
Rutherford County, North Carolina—Rutherford County, North Carolina.						
First Citizens	3	$97.3M	14.6			
Carter Bank	10	$8.1M	1.2			
First Citizens Post-Consummation	3	$105.4M	15.8	2058	35	10
Sanford, North Carolina[1] — Lee County, North Carolina.						
First Citizens	3	$108.1M	14.3			
Carter Bank	8	$11.8M	1.5			
First Citizens Post-Consummation	3	$120.0M	15.9	1951	45	8
Henderson, North Carolina[1] —Vance and Warren Counties, both in North Carolina.						
First Citizens	2	$112.4M	22.8			
Carter Bank	6	$12.9M	2.6			
First Citizens Post-Consummation	2	$125.3M	25.4	2362	119	8
Wilkes County, North Carolina—Wilkes County, North Carolina.						
First Citizens	4	$87.2M	12.3			
Carter Bank	10	$9.2M	1.3			
First Citizens Post-Consummation	2	$96.3M	13.6	1554	33	10
Winston-Salem, North Carolina[1] —Davie, Forsyth, Stokes, and Yadkin Counties, all in North Carolina.						
First Citizens	4	$586.1M	1.9			
Carter Bank	15	$21.6M	0.1			
First Citizens Post-Consummation	3	$607.6M	1.9	6741	0	17
Wilson, North Carolina[1] — Wilson County, North Carolina.						
First Citizens	2	$196.6M	18.8			
Carter Bank	8	$10.1M	1			
First Citizens Post-Consummation	2	$206.7M	19.7	3010	36	7
Johnson City–Bristol, Tennessee –Virginia —Carter, Sullivan, Unicoi, and Washington Counties, all in Tennessee; Scott County, Virginia; the towns of Church Hill, Kingsport, Mount Carmel, and Holston in Hawkins County, Tennessee; the independent city of Bristol, Virginia; and the towns of Benhams, Green Valley, Burson Place, Wallace, Wyndale, and Scenic Park in Washington County, Virginia.						
First Citizens	30	$8.2M	0.1			
Carter Bank	22	$34.0M	0.6			
First Citizens Post-Consummation	21	$42.3M	0.7	889	0	32
Alleghany, Virginia— Alleghany and Bath Counties; and the independent city of Covington, all in Virginia.						
First Citizens	7	$32.3M	6.4			
Carter Bank	9	$2.6M	0.5			
First Citizens Post-Consummation	7	$34.9M	6.9	1792	6	8
Charlottesville, Virginia— the independent city of Charlottesville, Virginia, Albemarle; Buckingham, Fluvanna, Greene, Madison, and Nelson Counties, all in Virginia; districts 1, 2, and 3 in Orange County, Virginia.						
First Citizens	11	$69.4M	1.4			
Carter Bank	15	$24.8M	0.5			
First Citizens Post-Consummation	10	$94.2M	1.9	1374	2	19
Emporia, Virginia—the independent city of Emporia, Virginia; and Greensville County, Virginia.						
First Citizens	5	$29.1M	12			
Carter Bank	6	$17.0M	7			
First Citizens Post-Consummation	3	$46.1M	19.1	2163	170	5

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Appendix B—*continued*

First Citizens Bank/Carter Bank Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Fredericksburg, Virginia— the independent city of Fredericksburg, Virginia; Caroline, King George, and Spotsylvania Counties, all in Virginia; Districts 4 and 5 in Orange County, Virginia, and the Washington District in Westmoreland County, Virginia.						
First Citizens	12	$19.8M	0.7			
Carter Bank	8	$67.1M	2.3			
First Citizens Post-Consummation	8	$86.8M	3	1784	3	16
Harrisonburg, Virginia–West Virginia—the independent city of Harrisonburg, Virginia; and Rockingham and Page Counties, both in Virginia; and Pendleton County, West Virginia.						
First Citizens	15	$27.0M	1			
Carter Bank	12	$77.2M	2.9			
First Citizens Post-Consummation	11	$104.2M	3.9	1029	6	17
Lynchburg, Virginia — the independent city of Lynchburg, Virginia; Amherst, Appomattox, and Campbell Counties, all in Virginia; and the portion of Bedford County east of Route 43 (excluding the independent city of Bedford, Virginia), Virginia.						
First Citizens	10	$69.4M	1.7			
Carter Bank	5	$370.5M	8.9			
First Citizens Post-Consummation	4	$439.9M	10.6	1366	30	15
Blacksburg, Virginia— the independent city of Radford, Virginia; and Floyd, Giles, Montgomery, and Pulaski Counties, all in Virginia.						
First Citizens	12	$21.4M	0.7			
Carter Bank	4	$287.6M	9.8			
First Citizens Post-Consummation	4	$309.0M	10.5	1491	14	13
Roanoke, Virginia[1] —the independent cities of Bedford, Roanoke, and Salem, all in Virginia; Botetourt, Craig, Franklin, and Roanoke Counties, all in Virginia; and the portion of Bedford County west of Route 43, in Virginia.						
First Citizens	6	$325.9M	4.2			
Carter Bank	4	$712.2M	9.1			
First Citizens Post-Consummation	3	$1.0B	13.3	1515	76	18
Staunton, Virginia— the independent cities of Staunton and Waynesboro, both in Virginia; and Augusta and Highland Counties, both in Virginia.						
First Citizens	12	$42.8M	2.8			
Carter Bank	9	$66.3M	4.3			
First Citizens Post-Consummation	5	$109.1M	7.1	1263	24	14
Burlington, North Carolina—Alamance and Caswell Counties (excluding the Dan River, Milton, Pelham, and Yanceyville townships), in North Carolina.						
Fidelity	12	$30.7M	1.6			
Carter Bank	14	$17.7M	0.9			
First Citizens Post-Consummation	9	$48.4M	2.5	1355	3	15
Shelby, North Carolina—Cleveland County (excluding King's Mountain Township), North Carolina.						
Fidelity	4	$95.3M	11.6			
Carter Bank	10	$1.9M	0.2			
First Citizens Post-Consummation	4	$97.2M	11.8	2130	6	9

Note: Data are as of June 30, 2015. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.

[1] Data reflect inclusion of Fidelity's banking operations in the market.

[2] Data reflect inclusion of Southern's banking operations in the market.

[3] Data reflects inclusion of both Southern's and Fidelity's banking operations in the market.

Central Bancompany, Inc.
Jefferson City, Missouri

Order Approving the Acquisition of a Bank
FRB Order No. 2017-03 (February 8, 2017)

Central Bancompany, Inc. ("Central"), Jefferson City, Missouri, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire 100 percent of the voting shares of Bank Star One ("Star One"), Fulton, Missouri.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 56,654 (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.

Central, with consolidated assets of approximately $12.3 billion, is the 108th largest depository organization in the United States, controlling deposits of approximately $9.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] Central controls 13 insured depository institutions, which operate in Illinois, Kansas, Missouri, and Oklahoma. Central is the sixth largest insured depository organization in Missouri, controlling deposits of approximately $7.6 billion, which represent approximately 4.8 percent of the total deposits of insured depository institutions in that state.[5]

Star One, with total assets of approximately $87.6 million, is a subsidiary of Bancstar, Inc., St. Louis, Missouri, the 3,323rd largest depository organization in the United States. Star One is a Missouri-chartered nonmember bank that operates only in Missouri. Bancstar, Inc. is the 102nd largest insured depository organization in Missouri, controlling approximately $215.5 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Missouri.

On consummation of this proposal, Central would become the 107th largest depository organization in the United States, with consolidated assets of approximately $12.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Central would control deposits of approximately $9.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Missouri, Central would remain the sixth largest depository organization, controlling deposits of approximately $7.7 billion, which represent approximately 5.0 percent of the total deposits of insured depository institutions in that state.

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 any attempt to monopolize the business of banking in any relevant market.[6] The BHC Act also prohibits the Board from approving a

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 Nationwide deposit, asset, and ranking data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5 State deposit, market share, and ranking data are as of June 30, 2015.

6 12 U.S.C. § 1842(c)(1)(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.[7]

Central has subsidiary depository institutions that compete directly with Star One in the Jefferson City, Missouri, banking market (the "Jefferson City market")[8] and the Lake of the Ozarks, Missouri, banking market (the "Lake of the Ozarks market").[9] 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 the total deposits in insured depository institutions in the markets ("market deposits") that Central would control,[10] the concentration level 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"),[11] and other characteristics of the markets.

The competitive effects of the proposal in the Jefferson City and Lake of the Ozarks markets warrant a detailed review because the proposal would result in the market deposit share of Central exceeding 35 percent in these markets when using initial competitive screening data.

Jefferson City, Missouri, Banking Market

Using the initial competitive screening data, Central is the largest depository organization in the Jefferson City market, controlling deposits of approximately $2.1 billion, which represent approximately 47.7 percent of market deposits. Star One is the 15th largest depository organization in the market, controlling deposits of approximately $42.8 million, which represent approximately 1.0 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Jefferson City market, controlling deposits of approximately $2.1 billion, which would represent approximately 48.7 percent of market deposits. The HHI in the market would increase by 92 points, from 2,553 to 2,645.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Jefferson City market.[12] Factors indicate that the increase in concentra-

[7] 12 U.S.C. § 1842(c)(1)(B).

[8] The Jefferson City market is defined as Callaway, Cole, and Osage counties; Boone, Jackson, and Jefferson townships in Maries County; and the western half of Gasconade County, including the Richland, Boulware, Third Creek, Clay, and Bourbois townships, all in Missouri.

[9] The Lake of the Ozarks market is defined as Camden, Miller, and Morgan counties, all in Missouri.

[10] Deposit and market share data are as of June 30, 2015, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's Summary of Deposits survey.

[11] 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 the DOJ Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

[12] The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. *See Nationsbank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

tion in the Jefferson City market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of four community credit unions in the Jefferson City market. The institutions offer a wide range of consumer banking products, operate street level branches, and have broad membership criteria that include almost all of the residents in the relevant banking market.[13] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests modest reductions are appropriate in the resulting market concentration of the proposed transaction in the Jefferson City market. After consummation, adjusting to reflect competition from credit unions in the market, the market concentration level in the Jefferson City market as measured by the HHI would increase by 89, from a level of 2,445 to 2,534, and the market share of Central resulting from the transaction would increase in the market from 46.7 percent to 47.6 percent.

Central argues that certain of its deposits in the Jefferson City market distort the measure of the competitive effect of the proposal on the Jefferson City market because those deposits cannot be used for lending. In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude categories of deposits because all deposits are typically available to support lending and other banking activities at any location, and the deposits maintained in a specific market represent a firm's ability to compete in that market. The Board, however, has adjusted market deposits to exclude specific types of out-of-market deposits held by an acquirer in rare situations when evidence supports a finding that the out-of-market deposits are subject to legal or other restrictions that constrain an organization's ability to use those deposits to support its general banking activities and that there are data available to make comparable adjustments to the market shares for other participants, if appropriate.[14]

Central has some out-of-market deposits that are booked at its main office that are subject to legal or other restrictions that constrain the organization's ability to lend on such deposits. These deposits have been generated from a large class action settlement and are being held in escrow for payment to consumers throughout the United States. Central represents that it cannot lend on these deposits.

To account for the possibility that other market competitors might maintain similar deposits in the Jefferson City market, the Board excluded deposits from the second largest competitor in the market such that the size of this competitor's largest branch in the market is reduced to the size of its second largest branch in the market. This adjustment also suggests a modest reduction in the initial measures of market concentration. After making these adjustments and weighing the deposits of credit unions at 50 percent, Central would control approximately 46.6 percent of market deposits, and the HHI would increase by 96 points to a level of 2,422.

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[13] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[14] *See Huntington Bancshares Incorporated* , FRB Order No. 2016-13, 12-15 (July 29, 2016); *First Security Corp.*, 86 *Federal Reserve Bulletin* 122, 125-27 (2000).

The Board has also examined other aspects of the structure of the Jefferson City market that mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Jefferson City market. After consummation of the proposal, Central would face competition from 23 other depository institutions in the market, one of which would control more than 9 percent of market deposits and two of which would control more than 6 percent of market deposits. The presence of these viable competitors suggests that Central would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Central in the Jefferson City market. This conclusion is supported in this case by an analysis of private pricing data, which indicates that Central's fees and interest rates for deposit products in the Jefferson City market are close to the median prices of other banks in the market and do not deviate substantially from Central's prices in markets where Central is not the dominant firm. Moreover, although the market is highly concentrated, as measured by the HHI, the change in market share and market structure would be de minimis.

Lake of the Ozarks, Missouri, Banking Market

Using the initial competitive screening data, Central is the largest depository organization in the Lake of the Ozarks market, controlling deposits of approximately $579.4 million, which represent approximately 36.8 percent of market deposits. Star One is the 10th largest depository organization in the market, controlling deposits of approximately $32.5 million, which represent approximately 2.1 percent of market deposits. On consummation of the proposal, the combined entity would be the largest depository organization in the Lake of the Ozarks market, controlling deposits of approximately $611.9 million, which would represent approximately 38.9 percent of market deposits. The HHI in the market would increase by 152 points, from 1,816 to 1,968.

One credit union exerts a competitive influence in the Lake of the Ozarks market. This institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market. The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in estimating market influence. Adjusting to reflect competition from this credit union, the market concentration level in the Lake of the Ozarks market as measured by the HHI would increase by 149, from a level of 1,773 to 1,922, and the market share of Central resulting from the transaction would increase in the market from 36.3 percent to 38.4 percent. In addition to the credit union, 17 commercial bank competitors would remain in the market, two of which would control more than 10 percent of market deposits and one of which is a large, national depository institution that would control approximately 9 percent of market deposits. The presence of these viable competitors suggests that Central would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Central in the Lake of the Ozarks market. Moreover, as in the Jefferson City market, the change in market share and market structure resulting from the proposal in the Lake of the Ozarks market would be relatively small.

Conclusion Regarding Competitive Effects

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 Jefferson City market and the Lake of the Ozarks 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, in particular the structure of the relevant markets, the number of remaining competitors, the small increase in market share associated with the proposal, and other factors discussed above, 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 Jefferson City market, the Lake of the Ozarks 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 the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[15] 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 relevant 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 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.

Central and Star One are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a purchase of stock in exchange for cash.[16] The asset quality, earnings, and liquidity of Central and Star One are consistent with approval, and Central 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 Central, its subsidiary depository institutions, and Star One, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Central; 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.

Central and its subsidiary depository institutions are considered to be well managed. Central's directors and senior executive officers 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 Central's plans for implementing the proposal. Central has conducted comprehensive due diligence and is devoting significant financial and other

[15] 12 U.S.C. §§ 1842(c)(2), (5), and (6).

[16] Central will purchase 100 percent of Star One's outstanding voting shares from BancStar, Inc., St. Louis, Missouri, a bank holding company, in exchange for cash. Central has the resources to fund this transaction.

resources to address all aspects of the post-integration process for this proposal. Star One would initially be a standalone depository institution subsidiary of Central following consummation of the proposal. Central has represented that it plans to submit an application to merge Star One into two of its subsidiary depository institutions, Central Bank of Lake of the Ozarks and The Central Trust Bank, following consummation of the proposal. Central would implement its risk-management policies, procedures, and controls at Star One, and these are considered acceptable from a supervisory perspective. In addition, Central's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.

Based on all the facts of record, including Central's supervisory record, managerial and operational resources, and plans for operating the combined 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 Central and Star One 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.[17] 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 Community Reinvestment Act ("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,[18] 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.[19]

In addition, the Board considers the banks' overall compliance records and the results of 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 each of Central's subsidiary depository institutions and Star One, the fair lending and compliance records of each of the involved banks, the supervisory views of examiners, confidential supervisory information, information provided by Central, and the public comments received on the proposal.

17 12 U.S.C. § 1842(c)(2).
18 12 U.S.C. § 2901(b).
19 12 U.S.C. § 2903.

Public Comments Regarding the Proposal

In this case, the Board received comments from commenters who objected to the proposal on the basis of alleged disparities in mortgage lending by one of Central's subsidiary depository institutions, Central Bank of the Midwest ("CBMW"), particularly in the number of home improvement and refinancing loans made to African American borrowers and borrowers in minority-populated LMI areas in the urban core of Kansas City, Missouri, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2011 to 2015. The commenters stated that CBMW has failed to adequately serve the needs of the communities in which it operates and does not adequately comply with the CRA, the Fair Housing Act, and the Equal Credit Opportunity Act.[20] The commenters also alleged that CBMW has not established any branches in or near any minority or LMI areas and that its lending in these areas is negligible; that CBMW's community development lending efforts have ignored certain minority communities within Kansas City; and that CBMW's small business lending in low-income tracts lags behind that of other banks in the area. The commenters indicated that they would support the application if Central would agree to take a series of steps, including designating a full-time urban loan originator,[21] establishing a branch within the urban core of Kansas City, and adopting certain community development and lending goals for the urban core of Kansas City.[22]

Businesses of the Involved Institutions and Response to Comments

Central controls 12 regional banks throughout Missouri and one bank in Oklahoma. Central's subsidiary depository institutions provide a broad range of retail and commercial banking products and services. Central's bank subsidiaries engage in significant commercial and industrial lending and offer an array of financing alternatives, such as revolving lines of credit, equipment and fixture financing, letters of credit, and floor plan lines for automobile dealers. Central's subsidiary banks also provide treasury management services to commercial customers and wealth management, trust, and brokerage services.

Star One also offers a broad range of retail and commercial banking products and services. Star One's lending activities are primarily focused in real-estate-secured commercial lending.

Central asserts that its subsidiary depository institutions have consistently met the requirements of the CRA and that since CBMW was acquired by Central in 1993, CBMW has consistently received "Satisfactory" CRA ratings. Central states that CBMW has adopted community outreach initiatives to assess the needs of local LMI and minority communities and that the bank has made efforts to reach these segments of the population. Central further represents that CBMW markets its products to the entire Kansas City metro area, including the urban core, and has purposely directed some of its advertising to media that reach primarily minority audiences. Central also asserts that CBMW's "Home Turf Loan Program" was designed specifically for LMI individuals and is targeted to LMI census

[20] 42 U.S.C. §§ 3601-3619; 15 U.S.C. §§ 1691 *et seq*.

[21] The commenters subsequently acknowledged that CBMW already has established a full-time urban loan originator.

[22] 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.*, *Wintrust Financial Corporation*, FRB Order No. 2016-17 at 8 n. 19 (October 28, 2016); *Huntington Bancshares Incorporated*, 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). 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.

tracts within the bank's CRA assessment area. Central also argues that CBMW's officers and employees are actively engaged in outreach to areas throughout Kansas City and that CBMW has made significant investments in affordable housing projects in the Kansas City metro area. Central also represents that CBMW has created a full-time mortgage lending position with a focus on the LMI and minority-populated areas within the urban core of Kansas City.

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 responses 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 appropriate federal supervisors.[23]

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.[24] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available HMDA data, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance.[25] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.[26] Large institutions are subject to a lending test similar to that described above and an investment test that evaluates the number and amount of qualified investments that benefit their assessment areas. Large institutions are also subject to a service test that evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[27]

[23] *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48,506, 48,548 (July 25, 2016).

[24] 12 U.S.C. § 2906.

[25] *See* 12 CFR 228.26(b).

[26] *See* 12 CFR 228.26(c).

[27] *See* 12 CFR 228.21 *et seq*.

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

In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Kansas City with respect to CBMW; the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of St. Louis with respect to Central Bank of Lake of the Ozarks and The Central Trust Bank, which operate in the same banking markets as Star One; and the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") with respect to Star One.

CRA and Consumer Compliance Performance of Central Bank of the Midwest

CBMW, which operates primarily in the Kansas City, Missouri, banking market, received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Kansas City, as of August 24, 2015 ("CBMW Evaluation").[29] CBMW received "High Satisfactory" ratings for both the lending test and the service test and a "Low Satisfactory" rating for the investment test.[30]

Examiners determined that the bank's lending activities reflected good responsiveness to the credit needs of its assessment area, and a high percentage of CBMW's loans were made inside its assessment area. The distribution of CBMW's loans to borrowers of different income levels and businesses of different revenue sizes was considered adequate. Examiners found that the bank made use of innovative and flexible lending programs to reach minority and LMI borrowers. Examiners noted that CBMW made a relatively high level of community development loans, including revitalization and stabilization loans in areas addressed in city revitalization plans and loans to support economic development, originated through the Small Business Administration. Examiners concluded that CBMW's total qualified investment activity remained adequate. Examiners further noted that the bank's investments demonstrated adequate responsiveness to community development needs. Examiners also found that CBMW's performance under the service test reflected a high level of qualified community development services within the bank's assessment area, including bank staff and officers providing financial expertise, personal financial checkups, home buyer counseling, and small business training. Examiners noted CBMW's accessible delivery systems, reasonable business hours, and a neutral effect of branch openings and closings.

Concurrently with the CBMW Evaluation, examiners conducted a consumer compliance examination of CBMW. As part of this review, examiners reviewed CBMW's lending activity reported under HMDA and assessed the effectiveness of controls to mitigate fair lending risk. The Board has taken into consideration the results of this examination,

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28 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.

29 The CBMW Evaluation was conducted using Large Bank CRA Examination Procedures, consisting of the lending test, the investment test, and the service test described above. The CBMW Evaluation reviewed HMDA loans and small business loans from January 1, 2013, through December 31, 2014. Examiners reviewed community development activities from August 13, 2013, through August 24, 2015.

30 The CBMW Evaluation reviewed the bank's activities in Johnson County, Kansas and Jackson and Cass Counties, Missouri.

including examiners' review of the bank's policies and procedures for fair lending and conclusion that the bank has well established, detailed policies and procedures.

CBMW's Efforts since the CBMW Evaluation

Central represents that, since the CBMW Evaluation, CBMW has made a number of community development loans and investments to support its assessment area and that CBMW continues to review and analyze opportunities to increase the level of applications and originations within LMI areas. Central represents that CBMW has hired a new Community Affairs Officer, who brings significant experience and knowledge of the challenges within Kansas City's urban core. Central further states that CBMW plans to enhance the bank's "Home Turf Loan Program," which is targeted to LMI communities, by significantly increasing outreach efforts throughout the community, including in the urban core of Kansas City.

CRA Performance of Central Bank of Lake of the Ozarks

Central Bank of the Lake of the Ozarks ("CBLO") received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis, as of August 10, 2015 ("CBLO Evaluation").[31] CBLO received "Satisfactory" ratings for both the lending test and the community development test.[32]

Examiners determined that the bank's borrower profile revealed excellent penetration among borrowers of different income levels, including LMI borrowers, and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its assessment area. Examiners also noted that CBLO's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners noted that a substantial majority of the bank's loans and other lending-related activities were in its assessment area. Examiners found that CBLO's overall community development performance demonstrated adequate responsiveness to the community development needs of its assessment area, considering its capacity and the availability of opportunities for community development in its assessment area.

CBLO's Efforts since the CBLO Evaluation

Central represents that, since the CBLO Evaluation, CBLO has made significant qualified investments in its assessment area. Central also represents that CBLO has increased its community development lending and that CBLO's employees continue to offer their banking expertise through community development services by participating in local organizations that benefit LMI individuals.

CRA Performance of The Central Trust Bank

The Central Trust Bank ("Central Trust Bank") received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis, as of July 18, 2016 ("Central Trust Bank Evaluation").[33] Central Trust Bank

[31] The CBLO Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending test and the community development test described above. The CBLO Evaluation reviewed 1-4 family residential real estate lending, small business lending, and consumer motor vehicle lending from January 1, 2014, to December 31, 2014, and community development activities from November 5, 2012, to August 10, 2015.

[32] The CBLO Evaluation reviewed the bank's activities in Camden, Miller, and Morgan counties, Missouri.

[33] The Central Trust Bank Evaluation was conducted using Large Bank CRA Examination Procedures, consisting of the lending test, the investment test, and the service test described above. The Central Trust Bank Evalua-

received "High Satisfactory" ratings for each of the lending test, the investment test, and the service test.[34]

Examiners found that Central Trust Bank's lending levels reflected good responsiveness to assessment area credit needs and that a high percentage of the bank's loans were made within its assessment areas. Examiners noted that the bank's loan distribution reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Furthermore, examiners noted that the geographic distribution of loans reflected good penetration throughout Central Trust Bank's assessment areas, including LMI geographies. Examiners also found that Central Trust Bank made an adequate level of community development loans and that it made use of innovative and flexible lending practices in order to better serve the credit needs of its assessment areas. Examiners determined that the bank made a significant level of qualified community development investments and donations and was occasionally in a leadership position. Examiners found that the bank's delivery systems were accessible to geographies and individuals of different income levels in its assessment areas and that its record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals. Examiners also found that Central Trust Bank provided a relatively high level of community development services within its assessment areas.

CRA Performance of Central's Other Subsidiary Banks

In addition to CBMW, CBLO, and Central Trust Bank, Central is the parent company of 10 other insured depository institutions. The Board also considered the reports of examination of the CRA performance and fair lending compliance records of these other subsidiary depository institutions. Each of these institutions received a "Satisfactory" rating at its most recent CRA examination.

CRA Performance of Star One

Star One received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of February 4, 2013 ("Star One Evaluation").[35] Examiners found that Star One's loan-to-deposit ratio reflected a reasonable willingness to provide credit given the bank's size, financial condition, and community credit needs. Examiners noted that a majority of the bank's loans were extended in its assessment areas. Examiners also found that Star One's overall borrower profile reflected a reasonable penetration to individuals of different income levels and to businesses of different revenue sizes, given the demographics of its assessment areas. Examiners also noted that the bank's geographic distribution of lending reflected a reasonable dispersion throughout its 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. Central represents that it would improve Star One's

tion reviewed HMDA loans, small business loans, and consumer motor vehicle loans from January 1, 2014, through December 31, 2015. Examiners reviewed community development lending activity from May 27, 2014, through July 18, 2016.

[34] The Central Trust Bank Evaluation reviewed the bank's activities in the Jefferson City, Missouri, metropolitan statistical area, consisting of Callaway, Cole, and Moniteau counties, Missouri. The Central Trust Bank Evaluation also included a limited-scope evaluation of Central Trust Bank's activities in Miller County, Missouri.

[35] The Star One Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Star One Evaluation reviewed the bank's HMDA data and small business loans originated from January 1, 2010, through December 31, 2011. The Star One Evaluation included reviews of the bank's activities in two separate assessment areas, one encompassing all of Callaway County, Missouri, and another consisting of Camden, Miller, and Morgan counties, Missouri.

customers' access to banking products and services because it has a wider selection of products and services than those currently offered by Star One. For example, Central's subsidiary banks offer a full range of mortgage products through a mortgage service company affiliate, lockbox services, business internet banking with ACH and wire transfers, and the ability to make loan payments by telephone. Customers of Star One will also benefit from an expanded automated teller machine and branch network.

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 Central, 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."[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]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Central would have approximately $12.4 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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[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 No. 2012-2 (Feb. 14, 2012).

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. 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 Central 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 15th calendar day after the effective date of this Order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of St. Louis acting pursuant to delegated authority.

By order of the Board of Governors, effective February 8, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Anchor Bancshares, Inc.
Houston, Texas

Order Approving the Formation of a Bank Holding Company
FRB Order No. 2017-04 (February 9, 2017)

Anchor Bancshares, Inc. ("Anchor"), Houston, Texas, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company by acquiring 100 percent of the voting shares of First Bancshares of Texas, Inc. ("First Bancshares"), McGregor, Texas, and thereby indirectly acquiring control of its subsidiary state nonmember bank, Security Bank of Crawford ("SBC"), Crawford, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 60701 (2016)).[2] 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.

Anchor is a newly organized Texas corporation formed for the purpose of acquiring control of First Bancshares. First Bancshares, with consolidated assets of approximately $32.3 million, is the 5,712th largest insured depository organization in the United States, controlling approximately $27.6 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[3] First Bancshares controls SBC, which operates only in Texas. First Bancshares is the 509th largest insured depository organization in Texas, controlling deposits of approximately $17.9 million, which represent less than 1 percent of total deposits of insured depository institutions in that state.[4]

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 any 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 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.[5]

Anchor is a newly formed company that does not control any depository institutions. Consequently, the proposal does not involve a merger or acquisition that would result in a monopoly or elimination of a competitor in any relevant market. The Department of Justice has advised the Board that it does not believe that consummation of the proposal is likely to 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.

1 12 U.S.C. § 1842(a)(1).

2 12 CFR 262.3(b).

3 Asset and nationwide deposit-ranking data are as of June 30, 2016, unless otherwise noted.

4 State deposit data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5 12 U.S.C. § 1842(c)(1).

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 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 the financial condition of the organizations involved, as well as 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, and public comments on the proposal. The Board also evaluates the effect of the transaction on the financial condition of the applicant, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. 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.

On consummation of the proposal, Anchor would be well capitalized. In addition, SBC is well capitalized. The transaction is structured as a cash purchase funded from capital contributions made to Anchor by its principals. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Anchor has sufficient financial resources to effect the proposal and to comply with the Board's Small Bank Holding Company Policy Statement.[6]

The Board also has considered the managerial resources of the applicant and the public comments received on the proposal. The Board has reviewed the examination records of First Bancshares and SBC, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

First Bancshares and SBC are both considered to be well managed. First Bancshares' existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of First Bancshares have substantial knowledge of and experience in the banking and financial services sectors. Anchor represents that it has no plans to effect significant changes in management at SBC, other than the appointment of two principals of Anchor to SBC's board of directors. The current officers and directors of SBC will serve as directors on the board of Anchor.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of First Bancshares and SBC in combatting money-laundering activities, are consistent with approval.

[6] Anchor would be a small bank holding company after acquiring control of First Bancshares and would be subject to the Small Bank Holding Company Policy Statement. 12 CFR 225, appendix C.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served. 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 institution is helping to meet the credit needs of the communities it serves, 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 institution under the Community Reinvestment Act ("CRA").[7] 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,[8] and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[9]

In addition, the Board considers the bank's overall compliance record 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 SBC, the fair lending and compliance record of the bank, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC"), confidential supervisory information, other information provided by Anchor, and the public comments received on the proposal.

Public Comments Regarding the Proposal

One commenter objects to the proposal, alleging that Anchor discriminates against African Americans and "redlines" African American neighborhoods, particularly in the Dallas and Houston areas, both in Texas, with respect to its branching, marketing, and lending activities.[10] The commenter also states that Anchor has no advertising or marketing efforts directed at African American communities.

Businesses of the Involved Institutions and Response to Comments

Anchor states that it is a newly formed entity with no banking operations or operating locations in either Houston or Dallas, and it has not engaged in any advertising or marketing activities anywhere. Anchor further states that upon consummation of the

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7 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq*.

8 12 U.S.C. § 2901(b).

9 12 U.S.C. § 2903.

10 Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https://www.ffiec.gov/pdf/fairlend.pdf.

proposed transaction, Anchor intends to operate SBC at its current location of Crawford, Texas, which is outside the Houston and Dallas metropolitan statistical areas.

SBC is a one-branch community bank serving the City of Crawford, western McLennan County, and surrounding communities. SBC offers commercial and consumer deposit accounts with online banking and bill pay and 24-hour telephone banking. Deposit accounts include no-service-charge checking, money market, savings, and certificates of deposit. SBC makes loans in the community for a wide range of purposes, including for business, farm, and personal needs.

SBC represents that it has not engaged in nor received any consumer complaints regarding discriminatory lending practices in Houston, Dallas, or elsewhere. SBC emphasizes that it operates out of one location in Crawford, Texas, and that it does not have any material lending activity in Houston or Dallas. SBC states that it has consistently operated and continues to operate in material compliance with all applicable consumer regulations and that SBC's compliance with fair lending statutes and regulations has been consistently reviewed by the FDIC as part of its regular CRA performance evaluations.

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 comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance record of the institution, as well as information and views provided by the appropriate federal supervisors.[11] In this case, the Board considered the supervisory views of and information provided by 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.[12] 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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available data under the Home Mortgage Disclosure Act ("HMDA"), automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance.[13]

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[11] *See* Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

[12] 12 U.S.C. § 2906.

[13] *See* 12 CFR 228.26(b).

The Board is concerned when commenters assert that data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. However, in this case, the Board recognizes that neither the applicant nor SBC operates in the banking markets identified by the commenter. Rather, the applicant is a newly formed company, and SBC is a small banking organization that operates only in Crawford, Texas, and not in the Dallas or Houston banking markets.

CRA Performance of SBC

SBC was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC in August 2014 (the "SBC Evaluation").[14] Examiners determined that SBC demonstrated reasonable performance regarding its loan-to-deposit ratio given the bank's asset size, financial condition, and assessment area credit needs. In addition, examiners found that a majority of loans sampled were made within the assessment area, illustrating a reasonable commitment to meeting the credit needs of the local community. Examiners also noted that the bank's geographic distribution of lending within the assessment area reflected reasonable performance.

During the SBC Evaluation, FDIC examiners reviewed SBC's loan data to evaluate risks of discrimination.[15] Examiners also reviewed the bank's policies and procedures for fair lending. The Board has considered the results of these reviews.

Anchor represents that since the SBC Evaluation, the bank's lending strategy has not changed. SBC has increased its lending for multifamily rental units for low- to moderate-income families and individuals. In addition, SBC has not received any complaints from the public regarding any alleged violations of the Equal Credit Opportunity Act or other fair lending laws. Anchor represents that it has no plans to effect significant changes in management at SBC. Anchor believes that such continuity in management is in the best interests of the communities served by SBC. Further, Anchor represents that SBC has historically received satisfactory ratings during its CRA examinations and that SBC does not anticipate undertaking any new programs, activities, or products that would undermine its consistently satisfactory ratings.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the report of examination of the CRA record of the institution involved, information provided by Anchor, the public comments received, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of SBC, review of examination reports, consultations with the FDIC, and all the facts of record, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institution involved in this transaction, is consistent with approval of the application.

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

[14] SBC's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from August 10, 2009, through August 4, 2014.

[15] SBC is not required to report home loan data under the HMDA because it falls below the HMDA asset-size exemption threshold. *See* 12 CFR 1003.2(1)(i). SBC's assessment area contains no majority minority census tracts.

proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[16]

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.[17] 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.[18]

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Anchor would have approximately $32.3 million in consolidated assets and would not be likely to pose a systemic risk. The Board generally presumes that a merger or acquisition resulting in a firm with less than $25 billion in consolidated assets would not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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 concludes that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Anchor 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 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of Dallas, acting under delegated authority.

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

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

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

By order of the Board of Governors, effective February 9, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

F.N.B. Corporation
Pittsburgh, Pennsylvania

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-06 (February 24, 2017)

F.N.B. Corporation ("FNB"), Pittsburgh, Pennsylvania, 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 Act[2] to merge with Yadkin Financial Corporation ("Yadkin"), Raleigh, and thereby indirectly acquire Yadkin Bank, Statesville, both of North Carolina. Following the proposed acquisition, Yadkin Bank would be merged into FNB's subsidiary bank, First National Bank of Pennsylvania ("First National Bank"), Greenville, Pennsylvania.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 65358 (September 22, 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.

FNB, with consolidated assets of approximately $21.6 billion, is the 75th largest insured depository organization in the United States, controlling approximately $16.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] FNB controls First National Bank, which operates in Maryland, Ohio, Pennsylvania, and West Virginia.

Yadkin, with consolidated assets of approximately $7.4 billion, is the 166th largest insured depository organization in the United States, controlling approximately $5.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Yadkin controls Yadkin Bank, which operates in North Carolina and South Carolina.

On consummation of this proposal, FNB would become the 62nd largest insured depository organization in the United States, with consolidated assets of approximately $28.9 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. FNB would control consolidated deposits of approximately $21.3 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the United States.

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

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Yadkin Bank into First National 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).

4 12 CFR 262.3(b).

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

6 12 U.S.C. § 1842(d)(1)(A).

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, 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 FNB is Pennsylvania, and the home state of Yadkin Bank is North Carolina.[9] Yadkin Bank also is located in South Carolina. FNB is well capitalized and well managed under applicable law, and First National Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[10] North Carolina does not have a minimum age requirement,[11] and South Carolina does not have a minimum age requirement applicable to this transaction.[12] Yadkin Bank has been in existence for more than five years.

On consummation of the proposed transaction, FNB would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. The Board has considered all other requirements under section 3(d) of the BHC Act, including FNB's record of meeting the credit needs of the communities it serves. 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 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 communities to be served.[13]

FNB and Yadkin do not directly compete in any retail banking 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 any

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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 by which the bank is chartered.

10 12 U.S.C. § 2901 *et seq*.

11 *See* N.C. Gen. Stat. ch. 53C.

12 South Carolina law imposes a minimum age requirement only on the acquisition of a bank, or the acquisition of all or substantially all the branches of a bank, that is organized under the laws of South Carolina or that maintains its principal place of business in South Carolina. *See* S.C. Code Ann. §§ 34-25-50 and 34-25-240. This age requirement is not applicable to the proposed transaction because Yadkin Bank is organized under the laws of North Carolina.

13 12 U.S.C. § 1842(c)(1).

relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.[14]

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 public and supervisory information regarding capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal 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.

FNB and First National Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.[15] The asset quality, earnings, and liquidity of both First National Bank and Yadkin Bank are consistent with approval, and FNB 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 FNB, Yadkin, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FNB, 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.

FNB, Yadkin, and their subsidiary depository institutions are each considered to be well managed. FNB has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions. FNB'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.

[14] 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.

[15] At the time of the merger, each share of Yadkin voting common stock would be converted into a right to receive FNB common stock based on an exchange ratio. Each share of Yadkin nonvoting common stock would be converted into a right to receive either FNB common stock, based on an exchange ratio, or cash. FNB has the financial resources to effect the transaction.

The Board also has considered FNB's plans for implementing the proposal. FNB has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. FNB would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, FNB's and Yadkin's management have the experience and resources to operate the combined organization in a safe and sound manner, and FNB plans to integrate Yadkin's existing management and personnel in a manner that augments FNB's management.[16]

Based on all the facts of record, including FNB's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and public comments on the proposal,[17] 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 FNB and Yadkin 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.[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 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, in evaluating bank expansionary proposals.[20]

In addition, the Board considers the banks' overall compliance record 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.

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[16] FNB will increase the size of its board by one director, who will be appointed from Yadkin's board. In addition, FNB will invite six members of the board of directors of Yadkin to serve for a minimum of one year as members of FNB's newly established North Carolina Community Advisory Board.

[17] A commenter criticized the portions of transaction-account revenues generated by overdraft fees at First National Bank and Yadkin Bank, based on data reported for 2015. The levels of overdraft-fee revenues at First National Bank and Yadkin Bank do not raise safety and soundness concerns. Commenters also criticized the sequencing of credit and debit transactions implemented by First National Bank and criticized the number of overdraft item fees that First National Bank could charge in a single day pursuant to its account terms and conditions. FNB contends that its noninterest charges, including the sequencing of transactions, are in compliance with applicable regulations of the OCC. *See* 12 CFR 7.4002. The Board has consulted with the OCC and has considered the supervisory histories of the involved institutions and the firms' records of compliance in considering this case.

[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 the facts of record, including reports of examination of the CRA performance of First National Bank and Yadkin Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by FNB, and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

The Board received comments from 16 commenters supporting the proposal. Commenters described favorable experiences with the community investment and service programs of FNB. Several commenters commended the bank for its support of programs that provide services to LMI and other historically underserved communities. One commenter praised the speed at which FNB creates a positive impact in geographies that are new to the organization. Another commenter contended that the proposal will encourage economic development, job creation, and wealth generation in Cleveland, Ohio, and in surrounding communities.

The Board also received comments from four commenters expressing concerns about the proposal, alleging that FNB and Yadkin neglect LMI and minority communities. Three commenters allege, on the basis of data for 2015 reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[21] that FNB made a disproportionately low number of loans to LMI and minority borrowers, criticizing First National Bank's record of lending to minorities in the Allegheny County, Pennsylvania; Akron, Ohio; Anne Arundel County, Maryland; Baltimore, Maryland; Cleveland, Ohio; and Summit County, Ohio, areas. One commenter alleges that First National Bank has engaged in "redlining" in the Baltimore area.[22] Three commenters allege that FNB denied a disproportionately high number of loans to LMI and minority borrowers, based on 2015 HMDA data. Commenters expressed particular concern regarding denial rates for minority loan applicants in the Allegheny County, Baltimore, and Cleveland areas. One commenter alleges that FNB had an average to below-average record of small business lending in LMI areas, and two commenters criticized FNB's record of small business lending in Allegheny County. In addition, one commenter criticized Yadkin Bank's level of lending to minority borrowers in Mecklenburg County, North Carolina, based on 2015 HMDA data. One commenter criticized First National Bank's community development lending and investment performance, alleging that the bank's performance underperformed that of Yadkin Bank.

Commenters also expressed concerns regarding the future CRA performance of the combined bank. Several commenters argue that FNB should be required to work with community groups to create a community reinvestment plan and urged the Board to approve the application on the condition that FNB develop and successfully implement such a plan.

Businesses of the Involved Institutions and Response to Comments

FNB and First National Bank assert that they provide a range of financial products and services to individual customers and businesses. Through its branch network in Maryland, Ohio, Pennsylvania, and West Virginia, First National Bank states that it offers banking products and services to its customers, including deposits, safe deposit facilities, electronic

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[21] 12 U.S.C. § 2801 *et seq*.

[22] Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. Office of the Comptroller of the Currency et al., Interagency Fair Lending Examination Procedures (August 2009), https://www.ffiec.gov/pdf/fairlend.pdf.

banking services, money transfer services, secured and unsecured loans, and trust and fiduciary services. FNB also explains that it offers services through nonbank subsidiaries, including a consumer-finance company, an insurance agency, a leasing company, and a wealth-management affiliate.

FNB represents that Yadkin and Yadkin Bank also offer a range of financial products and services to individual customers and businesses, including business and consumer loans, commercial cash management services, and consumer deposit products.

In response to the commenters' allegations, FNB states that it maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations. For example, First National Bank monitors and reviews its loan policies and practices for the purpose of measuring its compliance with fair lending laws and equal credit opportunity requirements. FNB states that it will ensure that the level of community involvement historically performed by Yadkin will continue uninterrupted and contends that this level will be elevated when backed by the resources of the combined organization. FNB intends to maintain Yadkin's community development team at the combined organization and has hired a new Community Development Officer, whose primary objective will be to continue to execute FNB's community benefits plan.

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.[23]

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.[24] 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 company's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in

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

[24] 12 U.S.C. § 2906.

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;[25] (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.[26] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First National Bank

First National Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of August 10, 2015 ("First National Bank Evaluation").[27] First National Bank received a "High Satisfactory" rating for the Lending Test, a "Low Satisfactory" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.

Examiners found that First National Bank's overall lending levels reflected excellent responsiveness to community credit needs. According to examiners, the bank's geographic distribution of loans reflected good penetration throughout many of the bank's assessment areas. Examiners also found that the bank's distribution of borrowers reflected good penetration among borrowers of different income levels and among business and farm customers of different sizes, given the product lines offered by the institution.

In Pennsylvania,[28] an area of concern for commenters, examiners noted that First National Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that First National Bank used flexible lending practices in order to serve assessment area credit needs,

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[25] 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).

[26] 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 analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[27] The First National Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage and small business loan lending from January 1, 2010, through December 31, 2014, except for community development loans, which were evaluated from January 22, 2011, through December 31, 2014. The evaluation period for the Investment Test and the Service Test was from January 22, 2011, through December 31, 2014. The First National Bank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Pittsburgh, Pennsylvania, Metropolitan Statistical Area ("Pittsburgh assessment area"); the Cleveland–Elyria, Ohio, Metropolitan Statistical Area ("Cleveland assessment area"); the Baltimore–Columbia–Towson, Maryland, Metropolitan Statistical Area ("Baltimore assessment area"); the Weirton–Steubenville, West Virginia–Ohio, Metropolitan Statistical Area ("MSA"); the Youngstown–Warren–Boardman, Ohio–Pennsylvania, MSA; and the bank's assessment area in non-MSA areas of Pennsylvania. A limited-scope review was conducted in 11 other assessment areas in Ohio and Pennsylvania.

[28] First National Bank's performance in Pennsylvania had the greatest impact on the bank's CRA performance due to a higher concentration of deposits and lending than in other areas.

including single-family mortgage loan programs that serve eligible LMI borrowers.[29] These programs provided reduced down-payment requirements, "zero point" fixed interest rates, flexible loan-to-value limits, and reduced closing costs. Examiners noted that the bank made a relatively high level of community development loans in Pennsylvania during the review period.

In Ohio,[30] another area of concern for commenters, examiners found that First National Bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses. Examiners found that First National Bank's lending levels in the Cleveland assessment area reflected excellent responsiveness to the assessment area credit needs relative to the bank's deposit market share. Examiners noted that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas in that assessment area, low-income individuals, and/or very small businesses when considering bank lending distributions across geographies, and among borrowers, of different income levels. Examiners noted that the bank made an adequate level of community development loans in the Cleveland assessment area during the review period.

In Maryland,[31] another area of concern for commenters, examiners found that the bank's lending levels reflected adequate responsiveness to credit needs in the Baltimore assessment area, and that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas in that assessment area, low-income individuals, and/or very small businesses. Examiners noted that the bank made an adequate level of community development loans in the Baltimore assessment area during the review period, given the bank's short tenure and competitive position in the market.

Examiners found that First National Bank had an adequate level of qualified community development investment activity. In the areas of Pennsylvania receiving full-scope reviews, the bank had an adequate level of qualified community development investment and grants. The bank's investments supported affordable housing and activities that promote economic development. The bank also purchased mortgage-backed securities with the underlying collateral consisting of loans to LMI borrowers within the Pittsburgh assessment area. In each of the Cleveland and Baltimore assessment areas, examiners found the bank's Investment Test performance to be adequate.

With respect to the Service Test, examiners noted that, in the areas of Pennsylvania receiving full-scope reviews, First National Bank's delivery systems were accessible to essentially all portions of First National Bank's assessment areas and that the bank's services did not vary in a way that inconvenienced portions of the bank's assessment areas, particularly LMI geographies and/or individuals. Examiners also found that the bank provided an adequate level of community development services that were responsive to community needs. Examiners indicated that, in the Pittsburgh assessment area, First National Bank's employees provided technical assistance to community development organizations that provided an array of community services and access to affordable housing for LMI individuals, as well as technical assistance to organizations that supported economic development through programs that assist LMI and unemployed persons obtain

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[29] A commenter alleges that FNB rarely originates Federal Housing Administration ("FHA") loans.

[30] First National Bank's performance in Ohio was primarily based on the results of examiners' full-scope review in the Cleveland assessment area.

[31] First National Bank's performance in Maryland was based on the results of examiners' full-scope review in the Baltimore assessment area.

jobs. In the Cleveland and Baltimore assessment areas, examiners found the bank's Service Test performance in each assessment area to be adequate.[32]

First National Bank's Efforts since the 2015 CRA Evaluation

FNB represents that, since the First National Bank Evaluation, First National Bank is satisfactorily meeting the lending needs of LMI borrowers and areas, as well as the lending needs of small businesses and farms located in LMI census tracts. FNB has continued to provide mortgage loan products targeted toward LMI borrowers—the Family Homeownership Program and the Family Home Improvement/Rehabilitation Program—that include features such as reduced down-payment requirements, flexible down-payment assistance, and reduced closing costs. The bank also offers flexible loan products, such as FHA and Department of Veterans Affairs ("VA") products. First National Bank has continued to make qualifying community development investments, including Low Income Housing Tax Credit investments.

CRA Performance of Yadkin Bank

Yadkin Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of March 23, 2015 ("Yadkin Bank Evaluation").[33] Yadkin Bank received a "High Satisfactory" rating for the Lending Test, a "Low Satisfactory" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.[34]

Examiners noted that Yadkin Bank's overall lending levels reflected good responsiveness to the assessment areas' credit needs. Examiners also found that the bank's geographic distribution of loans reflected good penetration of home loans, small business loans, and small farm loans throughout the bank's assessment areas. Examiners found that the bank distribution of borrowers reflected good penetration among retail customers of different income levels and businesses and farms of different sizes. Examiners noted that the bank made extensive use of flexible lending practices to serve the assessment areas' credit needs, including flexible small business loan products through the Small Business Administration ("SBA") and the North Carolina Rural Economic Development Center. The SBA recognized the bank as the number one SBA lender in dollar volume in North Carolina. Examiners also noted that the bank offered flexible mortgage loan products through the VA, the FHA, the U.S. Department of Agriculture ("USDA"), and the North and South Carolina housing finance agencies. Examiners found that Yadkin Bank made an adequate level of community development loans.

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[32] One commenter alleges that FNB's overdraft practices were found to be unfair trade practices resulting in unjust enrichment as part of a class-action litigation, *Ord v. First National Bank of Pennsylvania*, No. 2:12-cv-00766-AJS (W.D. Pa. dismissed June 21, 2013). The case was settled without any admission of wrongdoing by the parties. Final Judgment & Order of Dismissal with Prejudice at 4–5, *Ord* (No. 2:12-cv-00766-AJS). FNB's practices have subsequently been reviewed by the OCC.

[33] The Yadkin Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and CRA data collection requirements for 2012 through 2014. Examiners did not consider HMDA or CRA lending data from the former VantageSouth Bank, which merged with Yadkin Bank in July 2014. Examiners also reviewed community development lending, innovative and flexible business practices, qualified investments, and community development services from May 15, 2012, through December 31, 2014. Examiners considered the bank's branch office distribution as of December 31, 2014. Examiners did not consider the bank's branches acquired from VantageSouth Bank, which were located outside of the bank's delineated assessment areas.

[34] The Yadkin Bank Evaluation included a full-scope assessment review of the bank's assessment areas in the following geographies: the Durham–Chapel Hill, North Carolina, MSA; the Charlotte–Concord–Gastonia, North Carolina–South Carolina, MSA ("Charlotte assessment area"); and the bank's assessment areas in non-MSA areas of each of North Carolina and South Carolina. A limited-scope review was performed in the Winston-Salem, North Carolina, MSA.

In the Charlotte assessment area, an area of concern for commenters, examiners noted that Yadkin Bank's lending levels reflected good responsiveness to assessment area credit needs. Examiners found that the bank's geographic distribution of loans reflected adequate penetration throughout the assessment area. The bank's distribution of borrowers was found by examiners to reflect good penetration among retail customers of different income levels, business customers of different sizes, and farms of different sizes. Yadkin Bank was found to have made an adequate level of community development loans in the assessment area.

Examiners observed that the bank's overall level of community development investments was adequate. Yadkin Bank invested in small business investment companies, purchased bonds that help to finance affordable housing in North Carolina, invested in a bond that supports economic development and revitalization in distressed and underserved areas of North Carolina, and invested in mortgage pools secured by LMI borrower mortgages. The bank provided qualified grants and donations to organizations that primarily provide services to LMI families located within the bank's assessment areas. In the Charlotte assessment area, examiners found that the bank had an adequate level of qualified community development investments.

Examiners found that the bank's delivery systems were reasonably accessible to all portions of the bank's assessment areas. Examiners noted that the bank's services did not vary in a way that inconveniences portions of the bank's assessment areas, particularly LMI geographies and/or individuals. Examiners found that the bank overall had provided a relatively high level of community development services, including in the Charlotte assessment area.

Yadkin Bank's Efforts since the 2015 CRA Evaluation

FNB represents that, since the Yadkin Bank Evaluation, Yadkin Bank has continued satisfactorily to help meet the needs of LMI borrowers and communities, as well as the borrowing needs of small businesses and farms located in LMI census tracts. Yadkin Bank has continued to provide flexible loan products, such as FHA loans, USDA loans, and VA loans. Yadkin Bank's employees participate on the boards of organizations that support or sustain economic growth and provide consumer-finance training.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding First National Bank's CRA, consumer compliance, and fair lending records. The OCC is reviewing the bank merger underlying this proposal, considering the same convenience and needs factor as must be considered by the Board. The OCC separately received comments on the bank merger application and was provided with the comments received by the Board. The OCC is considering all of the comments, those received by the OCC and those provided to the OCC by the Board, in connection with its review of the bank merger application.

The Board has considered the results of a recent consumer compliance examination of First National Bank conducted by OCC examiners, which included a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of a recent examination of First National Bank's compliance with the Fair Housing Act ("FHA"),[35] which included a review of the bank's lending data and policies and procedures to ensure compliance with the FHA.

[35] 42 U.S.C. § 3601 *et seq.*

The Board has taken these consultations with the OCC and the information discussed above into account in evaluating this proposal, including in considering whether FNB 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. The Board expects FNB to ensure that First National Bank complies with any commitments or conditions that the OCC may request or impose in connection with its action on the bank merger proposal.

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. FNB represents that as a result of the proposal, existing customers of Yadkin would have access to a complement of products and services that is comparable to or more expansive than those currently available at Yadkin, including trust services, investment products, insurance products, international banking, retirement plan and trust services, products for high-net-worth customers, and lease financing and other asset-based lending.[36] Moreover, FNB asserts that customers of both institutions would benefit from a more expansive branch and ATM network.[37]

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 FNB, 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."[38]

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

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[36] A commenter expressed concerns about Regency Finance, a subsidiary of FNB, alleging that the company may violate state usury laws through the sale of high-cost credit insurance products. FNB contends that Regency Finance adheres to all relevant federal laws and regulations and state statutes, including those governing usury, and would continue to do so if Regency Finance were to operate in North Carolina. The Board will continue to monitor FNB's compliance with applicable laws and regulations through the supervisory process.

[37] Commenters urged FNB to develop a community reinvestment plan. Following its submission of the application, FNB developed a community benefits plan in consultation with commenters and other organizations. In addition, two community organizations urged the Board to approve the application on the condition that FNB successfully implement a community reinvestment plan. 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 (July19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *FifthThird 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.

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

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.[39] 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.[40]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. Both the acquirer and the target are predominately engaged in 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 neither be a critical services provider nor would it 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[42] 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

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

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

[41] FNB primarily offers deposit, loan, wealth-management, insurance, and consumer finance products. Yadkin primarily offers deposit, loan, wealth-management, and insurance products. In each of its activities, FNB 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] 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 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.

BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by FNB 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 Cleveland, acting under delegated authority.

By order of the Board of Governors, effective February 24, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

People's United Financial, Inc.
Bridgeport, Connecticut

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2017-08 (March 16, 2017)

People's United Financial, Inc. ("People's United"), Bridgeport, Connecticut, 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 Act[2] to merge with Suffolk Bancorp, and thereby indirectly acquire The Suffolk County National Bank of Riverhead ("Suffolk Bank"), both of Riverhead, New York. Following the proposed acquisition, Suffolk Bank would be merged into People's United's subsidiary bank, People's United Bank, N.A. ("People's United Bank"), Bridgeport, Connecticut.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 55457 (August 19, 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.

People's United, with consolidated assets of approximately $40.6 billion, is the 60th largest depository organization in the United States. People's United controls approximately $29.7 billion in consolidated deposits, which represent less than 0.3 percent of the total amount of deposits of insured depository institutions in the United States.[5] People's United controls People's United Bank, which operates in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont. People's United is the 34th largest depository organization in New York, controlling deposits of approximately $3.4 billion in New York, which represent approximately 0.3 percent of the total deposits of insured depository institutions in that state.[6]

Suffolk Bancorp, with consolidated assets of approximately $2.1 billion, is the 412th largest depository organization in the United States, controlling approximately $1.9 billion in consolidated deposits nationwide, which represent less than 0.03 percent of the total amount of deposits of insured depository institutions in the United States. Suffolk Bancorp controls Suffolk Bank, which operates only in New York. Suffolk Bancorp is the 52nd largest insured depository organization in New York, controlling deposits of approximately $1.7 billion in New York, which represent 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, People's United would remain the 60th largest depository organization in the United States, with consolidated assets of approximately $43.0 billion, which represent less than 0.2 percent of the total amount of assets of insured depository institutions in the United States. People's United would control consolidated deposits of approximately $31.6 billion, which represent less than 0.3 percent of the total deposits of insured depository institutions in the United States. People's United would become the 29th largest depository organization in New York, controlling deposits of

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Suffolk Bank with and into People's United 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 February 2, 2017.

4 12 CFR 262.3(b).

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

6 State deposit data are as of June 30, 2015.

approximately $5.1 billion, which represent approximately 0.4 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.[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 less than 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 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, the bank holding company would upon consummation 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.[9]

For purposes of the BHC Act, the home state of People's United is Connecticut, and the home state of Suffolk Bank is New York.[10] People's United is well capitalized and well managed under applicable law and People's United Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[11] New York does not have any minimum age requirements,[12] and Suffolk Bank has been in existence for more than five years.

On consummation of the proposed transaction, People's United 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 New York, the only state in which People's United and Suffolk Bancorp have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including People's 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.

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

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

11 12 U.S.C. § 2901 *et seq.*

12 *See* N.Y. Banking Law § 223.

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 communities to be served.[13]

People's United and Suffolk Bancorp have subsidiary depository institutions that compete directly in one geographic banking market, the Metro New York City banking market.[14] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") that People's United would control;[15] the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[16] 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 in the Metro New York City banking market. On consummation, the Metro New York City banking market would remain unconcentrated, as measured by the HHI and as defined by the DOJ Bank Merger Guidelines. The change in HHI would be small, and numerous competitors would remain in the market.[17]

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 Metro New York City market or in any other relevant banking

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[13] 12 U.S.C. § 1842(c)(1).

[14] The Metro New York City market includes Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties in New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties in New Jersey; Pike County and portions of Monroe and Wayne counties in Pennsylvania; and Fairfield County and portions of Litchfield and New Haven counties in Connecticut.

[15] Deposit and market share data are as of June 30, 2015, 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] Together, the two firms control 1.1 percent of the deposits in that market and their merger would increase the HHI by only 1 point. Nearly 240 competitors would remain in the market after the proposed acquisition.

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.

People's United and Suffolk Bancorp are both well capitalized and People's United would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a share exchange.[18] The asset quality, earnings, and liquidity of both People's United Bank and Suffolk Bank are consistent with approval, and People's United 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 People's United, Suffolk Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by People's United; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

People's United, Suffolk Bancorp, and their subsidiary depository institutions are each considered to be well managed. People's United's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of People's United have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered People's United's plans for implementing the proposal. People's United has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-integration process for this proposal. People's United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervi-

[18] At the time of the merger, each share of Suffolk Bancorp common stock would be converted into the right to receive shares of People's United common stock, based on an exchange ratio.

sory perspective. In addition, People's United's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and People's United plans to integrate Suffolk Bancorp's existing management and personnel in a manner that augments People's United's management.[19]

Based on all the facts of record, including People's 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 People's United and Suffolk Bancorp 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.[20] 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,[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.[22]

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 People's United Bank and Suffolk Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by People's United, and the public comments received on the proposal.

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[19] People's United will invite the members of the board of directors of Suffolk Bancorp to serve as members of a regional advisory board. People's United Bank also plans to hire the president and chief executive officer of Suffolk Bancorp as its New York Market President.

[20] 12 U.S.C. § 1842(c)(2).

[21] 12 U.S.C. § 2901(b).

[22] 12 U.S.C. § 2903.

Summary of Public Comments on Convenience and Needs

The Board received comments from 14 commenters objecting to the proposal. All 14 commenters criticized People's United Bank's lending in the bank's New York City and Nassau-Suffolk County assessment areas ("AAs") by asserting that People's United Bank made a disproportionately low number of home purchase loans, home improvement loans, and refinance loans to African American, Asian, Hispanic, and LMI borrowers and by criticizing the rate at which People's United denied applications by African Americans and Hispanics, as compared to whites, for home purchase loans, home improvement loans, and refinance loans, as reflected in data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")[23] for 2012 through 2015. One commenter suggested that People's United Bank engaged in redlining in the New York City and Nassau-Suffolk County AAs.

Thirteen of the commenters alleged that People's United Bank makes a disproportionately low number of loans to businesses with annual revenues of less than $1 million in the bank's Hartford County and New Haven County AAs, both in Connecticut. These same commenters also generally alleged that People's United Bank has an inadequate record of helping to meet the convenience and needs of the communities where it does business because People's United Bank received a "Very Poor" rating on its investment performance in the Boston AA, a "Low Satisfactory" rating on its investment test in every state in which it operates except Vermont, and a "Low Satisfactory" rating on its lending and service tests in the New York City and Boston AAs, all in 2013. These commenters request that the Board not approve the proposal until People's 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.

One commenter expressed concern about the size of People's United's philanthropic grants. This commenter alleged that smaller grants can be less helpful for many nonprofit organizations, especially when coupled with extensive reporting requirements.

The Board also received 117 comments in support of the proposal from organizations that serve the communities in which People's United Bank does business. These commenters stated that People's United Bank has been a valuable community partner and sponsor for many initiatives, including afterschool, crime reduction, community development, and homelessness reduction programs.

Business of the Involved Institutions and Response to Comments

People's United and People's United Bank offer a broad range of financial products and services to consumers and businesses. Through its branch network in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont, People's United Bank offers a variety of banking products and services to its customers, including commercial, retail, and small business banking services, as well as wealth management services to individual, corporate, and municipal customers.

Suffolk Bank is a full-service bank that offers commercial and retail banking products and services, including commercial real estate loans, multifamily and mixed-use commercial loans primarily in the boroughs of New York City, commercial and industrial loans and agricultural loans, as well as loans secured by residential mortgages (including second lien mortgage loans) with a variety of plans for repayment.

[23] 12 U.S.C. § 2801 *et seq.*

People's United denies the commenters' allegations of discriminatory lending and redlining. People's United represents that it is committed to all fair lending laws and regulations and actively engages in monitoring, testing, and internal controls to maintain compliance with fair lending laws and regulations. People's United asserts that it offers many affordable mortgage loan programs and community development activities to increase affordable housing opportunities for LMI individuals and communities. People's United also asserts that its home mortgage lending volume in the New York City and Nassau-Suffolk County AAs is small because People's United entered these markets beginning in 2010 by acquiring banking institutions that had either small mortgage portfolios or whose branch staff were not trained to accept applications for mortgage loans. People's United argues that, as a result, it has had to create a mortgage origination business *de novo* in these markets. People's United maintains that it is difficult for an institution with few branches in New York City to gain material market share because it is a highly competitive banking market where significantly larger institutions enjoy broader name recognition. Since 2015, to increase its mortgage business in the New York City and Nassau-Suffolk County AAs, People's United has hired additional mortgage account officers and trained staff at the branch locations it has recently acquired to accept mortgage applications.

People's United represents that it is a committed lender to small businesses. According to People's United, it has been ranked as one of the top U.S. Small Business Administration volume lenders. People's United notes that it participates in programs with several government agencies to provide capital and special loans to small businesses. Specifically, People's United represents that People' United Bank is a significant investor in several small business loan funds, including the Connecticut-based Community Economic Development Fund and Capital for Change. People's United also represents that its employees provide human capital support to community development financial institutions and other entities that are focused on serving the needs of these communities.

People's United argues that its overall CRA rating of "Satisfactory" is consistent with approval, notwithstanding the isolated test ratings in the specific geographies noted by the commenters. People's United notes that its most recent CRA exam was conducted shortly after People's United Bank acquired branches in New York and Boston, so its CRA rating reflects the bank's performance in those markets before the institution had an opportunity to build its CRA program in those areas and does not reflect the bank's most recent efforts to improve its CRA performance. People's United also represents that it has taken steps to improve its CRA performance in the markets cited by the commenters, including by increasing its CRA-related investments in the Nassau-Suffolk County and Boston AAs between 2013 and 2016. People's United represents that it has made low-income, historic, new markets, and state tax credit investments in the New York City and Nassau-Suffolk County AAs. In addition, People's United represents that People's United Bank has undertaken a significant initiative to expand and broaden its mortgage origination capabilities in New York City and Long Island and has sought to expand its offering of affordable home mortgage products by participating in various state housing authority programs. Further, People's United represents that it has invested substantial amounts in funds that support affordable housing in Massachusetts.

In response to commenters' contention that approval should be conditioned on People's United's entering into a community benefits plan, People's United argues that the submission of such a plan is not required for approval under section 3 of the BHC Act. It asserts that the record of People's United and People's United Bank in meeting the convenience and needs of the communities they serve is otherwise consistent with approval.[24]

With respect to criticisms of its philanthropic activity, People's United represents that it has maintained a high level of cash giving through The People's United Community Foundation, The People's United Community Foundation of Eastern Massachusetts, and People's United's corporate philanthropy program. People's United asserts that it has allocated its philanthropic resources in a manner it believes to be in the best interest of its charitable recipients and the communities they serve. Additionally, the Board received several letters from community groups stating that People's United's grant-making activities were positively impactful.[25]

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 responses 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 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.

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 HMDA data 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-

[24] 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., Central Bancompany, Inc.*, FRB Order No. 2017-03 at 12 n. 22 (February 8, 2017); *Wintrust Financial Corporation*, FRB Order No. 2016-17 at 8 n. 19 (October 28, 2016); *Huntington Bancshares Incorporated*, 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). 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 AAs.

[25] The Board has noted that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to engage in charitable giving. *See e.g., CIT Group, Inc.*, FRB Order No. 2015-20 at 22 n. 51 (July 19, 2015).

[26] *See* Interagency Questions and Answers Regarding Community Reinvestment, 75 *Fed. Reg.* 11642, 11665 (March 11, 2010).

[27] 12 U.S.C. § 2906.

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;[28] (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.[29] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of People's United Bank

People's United Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of July 15, 2013 ("2013 CRA Evaluation").[30] People's United Bank received a "High Satisfactory" rating for the Lending and Service tests and a "Low Satisfactory" rating for the Investment Test.

Examiners found that People's United Bank's overall lending levels were responsive to community credit needs. According to examiners, the bank originated a substantial majority of loans within its AAs, and the distribution of loans across geographies and income levels was good. Examiners also found that People's United Bank exhibited a very strong record of community development lending that enhanced the bank's CRA performance in several AAs.

In New York, an area in which People's United was a recent entrant at the time of the CRA examination, People's United Bank's performance under the Lending Test was rated "Low Satisfactory." In the Nassau-Suffolk County AA, an area of concern to the commenters, People's United Bank's lending performance was considered adequate. Examiners found that, in New York, the bank's level of community development lending was good, the overall geographic distribution of small loans to businesses was good, and the overall geographic distribution of home mortgage loans was adequate. Examiners also found that the overall borrower distribution of home mortgage lending and small loans to businesses was adequate. Examiners noted that People's United Bank offered loan programs targeted to LMI borrowers, demonstrating product flexibility.

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28 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).

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.

30 The 2013 CRA Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending data and other CRA data (small loans to businesses and farms) from July 1, 2009, through December 31, 2012. Examiners reviewed community development loans, qualified investments, branching activities, and community development services from July 1, 2009, through June 30, 2013. The 2013 CRA Evaluation covered People's United Bank's 22AAs located in six states and one multistate metropolitan statistical area ("MSA"): Connecticut, Maine, Massachusetts, New Hampshire, New York, Vermont, and the Boston-Cambridge-Quincy MSA. The 2013 CRA Evaluation included a full-scope review of nine of these AAs, including the multistate MSA. A limited-scope review was conducted of the remaining 13AAs.

In Connecticut, including the Bridgeport, Hartford, and New Haven, Connecticut MSAs ("Connecticut MSAs"), another area of concern for the commenters and an area in which People's United was well established at the time the CRA examination was conducted, examiners assigned People's United a "High Satisfactory" rating for the Lending Test. Examiners found that the overall geographic distribution of small loans to businesses was excellent and of home mortgage loans was adequate. The examiners also found that, overall, the borrower distribution of the bank's lending was good.

In the Boston-Cambridge-Quincy MA-NH Multistate MSA ("Boston MSA"), an area of concern for the commenters and an area in which People's United was a recent entrant at the time the CRA examination was conducted, examiners found that the bank's performance under the Lending Test was "Low Satisfactory." With respect to home mortgage loans, examiners found that the overall geographic distribution of home purchase loans was good, but that the overall geographic distribution of home refinance loans was poor. Examiners also found that the overall borrower distribution of loans to small businesses was poor. However, examiners found that People's United Bank made use of innovative and flexible lending practices.

With respect to the bankwide Investment Test, examiners found that the bank's overall community development performance was adequate when considering the bank's responsiveness to community needs through its strong lending performance. In New York, the bank received a "Low Satisfactory" rating. In the Connecticut MSAs, examiners found that People's United Bank's performance was adequate considering its investment authority limitations and "High Satisfactory" performance under the Lending Test. In the Boston MSA, examiners found that People's United's performance on the Investment Test was very poor and was not offset by the bank's lending performance in that AA.

As noted, People's United Bank received a "High Satisfactory" rating for the Service Test overall. In New York, examiners rated People's United Bank's performance as "Low Satisfactory." However, examiners found that the bank's branch distribution in the Nassau-Suffolk County AA was good and that branches were reasonably accessible to individuals of different income levels. In the Connecticut MSAs, examiners rated People's United's performance as "High Satisfactory." Examiners found that bank employees participated, many in leadership roles, in a variety of organizations and partnerships, which benefited LMI individuals, promoted economic development, and provided affordable housing. In the Boston MSA, People's United Bank's performance on the Service Test was rated "Low Satisfactory." Examiners noted the bank's branch distribution was adequate and that branches were reasonably accessible to geographies and individuals of different incomes. Examiners stated that the bank's management provided alternative delivery systems to its customers. However, examiners noted that the bank had no branches in low-income geographies. Examiners also noted that the bank's employees provided a good level of community development services and participated in a variety of organizations and partnerships that benefited low- and moderate-income individuals, promoted economic development, and provided affordable housing.

People's United Bank's Efforts since the 2013 CRA Evaluation

People's United Bank represents that it has significantly expanded its investment activities, particularly in New York and Massachusetts, in order to help meet the needs of LMI communities since the 2013 CRA Evaluation. The bank states that it has significantly increased its CRA-related investments, including in affordable housing. It represents that it has offered debt facilities to further provide capital for economic development. It states that it also has provided grants and gifts to a number of community development organizations. It represents that it supports numerous nonprofit and economic development committees and has representatives that serve on advisory boards, investment committees, and loan committees for organizations engaged in community development and workforce development. The bank also asserts that the foundation affiliated with People's United Bank has provided grants to nonprofits engaged in financial education outreach for adults and children.

In New York, People's United Bank represents that it has made investments to build low-income housing, primarily through the purchase of Low-Income Housing Tax Credits. The bank states that it also has made community development and small business association loans. It represents that it has representatives who sit on advisory boards and committees for a number of community development organizations. In addition, the bank asserts that the community foundation affiliated with People's United has provided grants to nonprofit organizations and taught over 250 financial literacy classes in New York since the 2013 CRA Evaluation.

In Connecticut, People's United Bank represents that it has continued its commitment to providing banking services and investment capital to small businesses. The bank states that it has continued to invest in several small business loan funds and that its employees continue to sit on the loan committees of these funds and to help small businesses develop their creditworthiness. It states that its reputation for providing business operations and treasury management services to small businesses continues to grow in each of its AAs. The bank also highlighted its efforts to improve its home purchase lending in Connecticut. People's United Bank states that it has invested in participation certificates for junior mortgage instruments that allow consumers to purchase homes with close to 100 percent financing. The bank also represents that it has expanded the number of first-time homebuyer seminars it provides at no cost to consumers.

In Massachusetts, People's United Bank represents that it has substantially increased its level of CRA-related investments. For example, the bank represents it has significantly increased its level of CRA-qualified investments in Boston. The bank similarly represents that it has tripled its qualifying investments in Massachusetts as measured by both absolute dollar amounts and as a percentage of its tier 1 capital attributable to Massachusetts. People's United Bank states that these investments have primarily been used to develop affordable housing and to assist community development corporations that make capital contributions and loans to local and small businesses. The bank states that it has continued to sponsor the Federal Home Loan Bank of Boston's affordable housing program and has committed additional funds to state and nonprofit entities that develop low-income housing projects and make loans to small businesses. The bank notes that its employees actively participate and volunteer with nonprofits in Massachusetts and that the bank has a dedicated CRA officer who focuses on Massachusetts and spends a significant amount of time developing relationships with community development organizations in the state.

People's United asserts that People's United Bank offers a variety of loan products to LMI households and communities, including home mortgages, small business loans, economic development loans, loans for affordable housing, and loans for rural development. It asserts that the bank also partners with federal and state agencies to provide lending products tailored to LMI households. It contends that People's United Bank makes community development investments by purchasing low-income housing tax credits, state tax credits, and historical tax credits, and by investing in equity funds that work to meet the banking needs of the communities in which the bank operates.

People's United represents that it has undertaken several marketing and informational campaigns to make LMI and other consumers aware of its product offerings. It asserts that the bank has distributed mortgage product information to local realtors, as well as information packets for first-time homebuyers to the bank's lending partners. It contends that, in the third quarter of 2016, People's United Bank engaged a marketing firm to create a program to inform LMI borrowers about affordable home-purchase and refinance mortgage options. It also maintains that the bank operates branches in grocery stores that offer extended weekday and weekend hours to accommodate consumers whose work schedules prohibit them from visiting a bank during regular business hours.

CRA Performance of Suffolk Bank

Suffolk Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of November 30, 2015 ("Suffolk Bank Evaluation").[31] Suffolk Bank received "Outstanding" ratings for the Lending Test and Service Test and a "High Satisfactory" rating for the Investment Test.[32]

Examiners found that Suffolk Bank's geographic and borrower distribution of home mortgage loans was excellent, including in the Nassau-Suffolk County AA. Examiners also found that Suffolk Bank's geographic distribution of small loans to businesses and distribution of loans to small businesses was excellent. Examiners noted that the bank has provided flexible lending programs that are responsive to identified affordable housing needs and that a high percentage of the bank's loans were made within the bank's AA.

Examiners found that Suffolk Bank made a significant number of community development investments even though there had been few opportunities for such investments. Examiners noted that the majority of investments targeted an identified need in Suffolk Bank's AA, affordable housing for both home ownership and rental units.

Examiners noted that the bank's delivery systems were readily accessible to geographies and individuals of different income levels. Examiners found that all of Suffolk Bank's branches offered full retail services and that the percentage of branches located in moderate-income geographies coincided with the percentage of the population that lives in moderate-income geographies. Examiners observed that the bank had no branches in low-income geographies, but noted that only a few of the census tracts available to Suffolk Bank qualified as low-income and that less than 2 percent of the low-income population lived in the bank's AA. Examiners also noted that Suffolk Bank had been responsive to the retail banking needs of the communities it served by adjusting its branch hours based on feedback from customers and community members. Examiners stated that Suffolk Bank was a leader in providing community development services, including by having its branch managers and executives provide technical assistance to local organizations that focused on economic development, including chambers of commerce, economic development corporations, redevelopment councils, and local non-profit organizations. Examiners commented favorably on the bank's free homebuyer workshop that educated LMI borrowers about home ownership and financing and the bank's seminars to help customers protect themselves against fraud and cybersecurity risks. Examiners concluded that Suffolk Bank's community development services benefit the needs of LMI individuals in the bank's AA.

[31] The Suffolk Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending data and other CRA data (small loans to businesses and farms) from January 1, 2013, to September 30, 2015. The evaluation period for the Lending Test, Investment Test, and Service Test was from December 3, 2012, through November 30, 2015.

[32] The Suffolk Bank Evaluation included a full-scope assessment review of the bank's sole AA in the Nassau-Suffolk, New York MSA.

Views of the OCC and CFPB

In addition to conducting its own review of the institutions' records of meeting the convenience and needs of the communities in which they operate, the Board consulted with the OCC regarding both institutions' CRA and consumer compliance records, as well as with the CFPB regarding People's United Bank's record of consumer compliance. The OCC is the primary supervisor of both People's United Bank and Suffolk Bank. The OCC considered all of the comments, including those received by the Board and those received jointly by the OCC and the Board, in connection with its review of the bank merger application submitted by People's United Bank. The OCC approved the bank merger application on February 2, 2017.

The Board also consulted with the OCC regarding People's United's and Suffolk Bancorp's records of compliance with fair lending laws and regulations and the banks' policies and procedures relating to fair lending and other consumer protection laws and regulations, as well as the lending records of both institutions. The OCC recently reviewed People's United Bank's fair lending management practices and the bank's framework for identifying fair lending risks. In conducting this review, the OCC evaluated the bank's product offerings, delivery channels, underwriting processes, pricing, marketing practices, and lender compensation programs. The OCC also recently completed a review of Suffolk Bank's fair lending program. As part of its review, the OCC reviewed policies and procedures, training materials and records, compliance reviews, and loan data. The Board has taken into consideration this supervisory information.

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. People's United represents that, as a result of the proposal, existing customers of Suffolk Bancorp would have access to a complement of products and services that is comparable to or more expansive than that currently available at Suffolk Bancorp, including brokerage, financial advisory, and investment management services. Similarly, People's United represents that the merger would allow it to provide banking products not provided by Suffolk Bancorp that are targeted towards LMI consumers, including loans offered through the New York Mortgage Authority, Fannie Mae, the Home Development Fund, the Departments of Agriculture and Veterans Affairs, as well as the Federal Housing Administration. Moreover, People's United asserts that customers of both institutions would benefit from a more expansive branch and ATM network. For example, People's United Bank's supermarket branches offer expanded evening and weekend hours, providing expanded branch access and greater flexibility for people of all income levels, including LMI individuals whose work schedules make it difficult to visit a branch during "traditional" banking hours. People's United also asserts that it will maintain and enhance Suffolk Bank's strong CRA performance by leveraging Suffolk Bank's expertise in the Long Island market, especially its LMI lending performance, community development, and small business loan capabilities, and its existing involvement with local community development organizations.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by People's United, public comments on the proposal, information provided by the OCC and CFPB, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on this 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 2012, in its order approving Capital One Financial Corporation's acquisition of certain U.S. operations of ING, the Board stated that a proposal that involves an acquisition of less than $2 billion in assets, that results in a firm with less than $25 billion in total assets, or that represents a corporate reorganization may be presumed not to raise material financial stability concerns absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36] Since establishing this presumption, 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 create institutions that pose systemic risks. Transactions below either of these asset thresholds have typically not involved, or resulted in, firms with activities, structures, and operations that are complex or opaque.[37] Such transactions have also not materially increased the interconnectedness or complexity of the financial system.

Accordingly, the Board now presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of the aforementioned size thresholds, absent evidence that the transaction would result in a significant increase in

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[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 No. 2012-2 (February 14, 2012).

[36] *Id* at 30.

[37] *See e.g., F.N.B. Corporation*, FRB Order No. 2017-06 (February 24, 2017); *Huntington Bancshares Incorporated*, FRB Order No. 2016-13 (July 29, 2016); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *BB&T Corporation*, FRB Order No. 2015-35 (December 23, 2015); *M&T Bank Corporation*, FRB Order No. 2015-27 (September 30, 2015); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015).

interconnectedness, complexity, cross-border activities, or other risk factors.[38] The Board will continue to presume that a proposal that represents a corporate reorganization does not raise financial stability concerns.[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. Both the acquirer and the target 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 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.[41] In reaching its conclusion, the Board has consid-

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[38] 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.

[39] The Board delegates to the Reserve Banks the authority to approve applications and notices in connection with proposals that meet the presumptions described above and that otherwise meet the criteria for delegated action.

[40] People's United primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, automobile financing, equipment leasing, community development investment, investment advisory and management services, fiduciary administration, trust services and operations, discount securities brokerage services, treasury management, capital market services (including corporate risk management, institutional sales, and trading and underwriting, including municipal bond underwriting and private placement activities), as well as reinsuring credit life and disability insurance and selling other insurance and financial products and services as agent. Suffolk Bancorp offers primarily retail and commercial deposit and loan products, commercial lease financing and related services, insurance brokerage services, financial consulting, trust operations, and fiduciary services. In each of its activities, People's 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.

[41] 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 August 19, 2016, and in relevant newspapers of general circulation (*Newsday*and *Connecticut Post*) on August 11, 2016. The comment period ended on September 10, 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.

In addition, several commenters requested a further extension of the comment period for the proposal. As noted above, the Board believes that commenters have had ample opportunity to submit comments on the proposal. During the comment period, the commenters, including the requestors, submitted detailed comments ered 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 People's United 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 March 16, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

in writing regarding 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 commenters' requests for additional time to comment do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determined not to extend further the comment period.

Cathay General Bancorp
Los Angeles, California

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2017-09 (March 20, 2017)

Cathay General Bancorp ("Cathay"), Los Angeles, California, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire SinoPac Bancorp ("SinoPac") and thereby indirectly acquire Far East National Bank ("Far East Bank"), both of Los Angeles, California.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's rules (81 *Federal Register* 70682 (October 13, 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.

Cathay, with consolidated assets of approximately $14.1 billion, is the 102nd largest insured depository organization in the United States. Cathay controls approximately $10.9 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] Cathay controls Cathay Bank, which operates in California, Illinois, Nevada, New York, New Jersey, Maryland, Massachusetts, Texas, Washington, Hong Kong, Shanghai, and Taipei. Cathay Bank is the 18th largest insured depository institution in California, controlling deposits of approximately $7.4 billion in California, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6]

SinoPac, with consolidated assets of approximately $1.3 billion, is the 571st largest insured depository organization in the United States. SinoPac controls approximately $981.8 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. SinoPac controls Far East Bank, which operates in California and controls less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Cathay would become the 94th largest depository organization in the United States, with consolidated assets of approximately $15.4 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Cathay would control consolidated deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 Following the proposed acquisition, Cathay plans to submit an application pursuant to section 18(c) of the Federal Deposit Insurance Act to merge Far East Bank into Cathay's subsidiary bank, Cathay Bank, Los Angeles, California. The merger of Far East Bank into Cathay Bank will be subject to the approval of the Federal Deposit Insurance Corporation ("FDIC"). 12 U.S.C. § 1828(c). For the interim period between consummation of the proposed acquisition and the anticipated bank merger, Cathay intends to operate Cathay Bank and Far East Bank as separate subsidiaries.

4 12 CFR 262.3(b). The Board received a comment asserting that Cathay did not provide adequate notice of the proposed acquisition to communities outside of California. In accordance with the Board's rules, notice of the proposal was published in a relevant newspaper of general circulation (*The Los Angeles Times*) in the community in which both Cathay and Far East Bank have their head offices, and commenters were provided over 30 days from the date of publication to submit their views on all aspects of the proposal.

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

6 State deposit data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, credit unions, savings associations, and savings banks.

$11.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In California, Cathay would remain the 18th largest depository institution, controlling deposits of approximately $8.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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.[7] 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.[8]

Cathay and SinoPac have subsidiary depository institutions that compete directly in the Los Angeles, California, banking market ("Los Angeles market")[9] and the San Francisco-Oakland-San Jose, California, banking market ("San Francisco market").[10] The Board has considered the competitive effects of the proposal in these banking markets. 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 Cathay would control;[11] 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");[12] 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 in the Los Angeles and San Francisco markets. On consummation of the proposal, the Los Angeles market would remain unconcentrated, 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.[13] On consummation of the proposal, the San Francisco

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7 12 U.S.C. § 1842(c)(1).

8 12 U.S.C. § 1842(c)(1)(B).

9 The Los Angeles market is defined as the Los Angeles metropolitan area in Los Angeles and Orange counties, as well as portions of San Bernardino, Ventura, and Kern counties.

10 The San Francisco market is defined as the San Francisco-Oakland-San Jose metropolitan area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties, as well as portions of Sonoma, Solano, San Benito, and Napa counties.

11 Local deposit and market share data are as of June 30, 2015, 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).

12 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.

13 Cathay operates the 14th largest depository institution in the Los Angeles market, controlling approximately $6.0 billion in deposits, which represent 1.34 percent of market deposits. SinoPac operates the 43rd largest

market would remain highly concentrated, as measured by the HHI. The change in the HHI in the San Francisco market would be small, and numerous competitors would remain in the banking market.[14]

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 Los Angeles or San Francisco 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 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.

Cathay and SinoPac 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 acquisition that is structured primarily as an exchange of shares for cash.[15] The asset quality, earnings, and liquidity of Cathay Bank and Far East Bank are consistent with approval, and Cathay appears to have adequate resources to absorb the costs of the

depository institution in the same market, controlling deposits of approximately $616.1 million, which represent about 0.14 percent of market deposits. On consummation of the proposed transaction, Cathay would become the 13th largest depository organization in the market, controlling deposits of approximately $6.6 billion, which represent approximately 1.48 percent of market deposits. The HHI for the Los Angeles market would increase by less than 1 point and remain at 982, and 125 competitors would remain in the market.

[14] Cathay operates the 22nd largest depository institution in the San Francisco market, controlling approximately $1.2 billion in deposits, which represent 0.28 percent of market deposits. SinoPac operates the 44th largest depository institution in the same market, controlling deposits of approximately $219.0 million, which represent about 0.05 percent of market deposits. On consummation of the proposed transaction, Cathay would become the 20th largest depository organization in the market, controlling deposits of approximately $1.42 billion, which represent approximately 0.33 percent of market deposits. The HHI for the San Francisco market would increase by less than 1 point and remain at 1810, and 83 competitors would remain in the market.

[15] To effect the transaction, each share of SinoPac common stock would be converted into a right to receive cash, based on an exchange ratio. Additionally, Cathay may elect to pay up to 10 percent of the purchase price in the form of shares of Cathay common stock. Cathay has the financial resources to fund the transaction.

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 Cathay, SinoPac, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Cathay; the Board's supervisory experiences with Cathay and SinoPac 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.[16]

Cathay, SinoPac, and their subsidiary depository institutions are each considered to be well managed. Cathay's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and Cathay's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Cathay's plans for implementing the proposal. Cathay 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. Cathay represents that, following consummation of the anticipated merger of Cathay Bank and Far East Bank, it would implement its risk-management policies, procedures, and controls at the combined organization.[17] These policies, procedures, and controls are considered satisfactory from a supervisory perspective. In addition, Cathay's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.[18]

[16] A commenter expressed concern that the purchase price of the transaction was low and did not reflect an arm's length transaction. Another commenter raised concerns about whether the proposed transaction would promote trade relations and foreign policy with China. These concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See, Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973) ("*Western Bancshares*"). One commenter expressed concern, without providing any evidence, that the government of China is influencing Cathay Bank, a United States-based bank. Based on the record, there is no indication that the government of China has an ownership interest in Cathay.

The Board also received a comment citing newspaper articles regarding concerns related to potential affiliate and insider transactions by the foreign parents of SinoPac. SinoPac is a wholly owned United States subsidiary of Bank SinoPac Company Limited ("Bank SinoPac"), a foreign banking organization based in Taipei, Taiwan. The incidents cited by the commenter do not relate to the applicant in this case and do not appear to relate to the operations of SinoPac or Far East Bank, but involve the foreign operations and activities of Bank SinoPac and a subsidiary of Bank SinoPac's Taiwan-based parent, SinoPac Financial Holdings Company Limited. As discussed above, the Board has reviewed the supervisory records of SinoPac and Far East Bank, the institutions that Cathay is proposing to acquire. This review included consideration of SinoPac's and Far East Bank's records of compliance with applicable laws and regulations, including those related to affiliate and insider transactions.

[17] Cathay represents that Far East Bank's risk-management policies and procedures would be maintained during the interim period between consummating the proposed acquisition of SinoPac and the anticipated merger of Cathay Bank and Far East Bank; however, Cathay Bank's current management team would provide comprehensive oversight and day-to-day monitoring.

[18] One commenter asked the Board to consider the diversity of Cathay's employees and management in reviewing the proposed transaction. While the Board encourages all firms to promote diversity in their management and workforce, the statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act are limited and specifically defined. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 n. 24 (2015); *CIT Group, Inc.*, 102 *Federal Reserve Bulletin* 1, 7 n. 24 (2015); *Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n. 31 (2004). *See also Western Bancshares*. Other provisions of law authorize the Board, together with the other federal financial supervisory agencies, to monitor the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 *Federal Register* 33016 (June 10, 2015). *See* Pub. L. No. 111-203, 124 Stat. 1376, 1541-44 (2010), codified at 12 U.S.C. § 5452.

Based on all the facts of record, including Cathay'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 Cathay and SinoPac 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.[19] 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 Community Reinvestment Act ("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,[20] 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.[21]

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 Cathay Bank and Far East Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by Cathay; and the public comments received on the proposal.

Summary of Public Comments on Convenience and Needs

In this case, the Board received comments from two commenters objecting to the proposal on the basis of Cathay's CRA performance and record of meeting the credit needs of the communities that it serves. The comments focused on Cathay Bank's record of serving LMI, African American, and Hispanic individuals, and small businesses. One comment focused primarily on the bank's performance in its California assessment areas, particularly the Los Angeles assessment area. The commenters argued that the bank is primarily

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19 12 U.S.C. § 1842(c)(2).
20 12 U.S.C. § 2901(b).
21 12 U.S.C. § 2903.

focused on meeting the needs of Chinese American and/or Asian American individuals and should expand its customer base to other minority populations.

Specifically, one commenter argued that Cathay Bank made a disproportionately small number of loans to LMI individuals and small businesses as compared to peer institutions.[22] This commenter argued that, based on data reported for 2015 under the Home Mortgage Disclosure Act ("HMDA"), Cathay Bank did not adequately serve African American and Hispanic individuals in the bank's California assessment areas. This commenter also argued that Cathay Bank was inadequately serving Southeast Asian individuals according to such data. Further, this commenter alleged that Cathay Bank engages in redlining and rewarded redlining by its management. This commenter was also critical of the amount Cathay Bank has devoted to CRA-related philanthropy and asserted that Cathay Bank's programs to address issues related to the unbanked or underbanked are inadequate.[23] Another commenter asserted that Cathay Bank's CRA performance is generally poor and contended that Cathay Bank received some of its worst ratings outside the state of California. This commenter also contended that Cathay plans to close several branches following consummation of the proposed transaction.

In addition to the adverse comments received by the Board, Cathay submitted 17 letters from California-based community, charitable, and business organizations supporting the proposal. These organizations generally represented that Cathay Bank and Far East Bank have strong histories of providing banking services to underserved populations in the community and that the merger would enable Cathay to better address the diverse needs of the communities in which it operates.

Businesses of the Involved Institutions and Response to Comments

Cathay operates primarily through Cathay Bank and provides a broad range of financial products and services to retail consumers and businesses. Cathay Bank's products and services include a variety of checking, savings, and certificate of deposit accounts; mortgage and other consumer lending products; business services and lending; forward currency spot and forward contracts; and international banking. Cathay's nonbanking subsidiaries provide customers with wealth management services, securities, and investment products.

Far East Bank offers a broad range of consumer and commercial banking products and services through nine locations in California. Its products and services include checking, savings, and certificate of deposit accounts; mortgage and other consumer lending products; business services and lending; and international banking services.

In response to the comments, Cathay asserts that Cathay Bank is committed to meeting the credit needs of the communities it serves and believes its product and service offerings are responsive to the diverse needs of its assessment areas. Further, Cathay maintains that Cathay Bank has comprehensive policies and procedures in place to ensure compliance with fair lending laws and to monitor fair lending risk.

Cathay asserts that it has a strong record of lending to small businesses and compares favorably to peers in terms of lending rates to small businesses in LMI areas, including in its California assessment areas. In support of this claim, Cathay represents that Cathay

[22] One commenter also voiced concerns about Cathay Bank's lending levels to minority-owned businesses and asserted that Cathay Bank made no Small Business Administration 7(a) loans to African American, Hispanic, or Southeast Asian American-owned businesses in 2015.

[23] The Board notes that neither the CRA nor the agencies' implementing rules require that institutions engage in a specific activity, such as charitable giving, in order to meet the credit needs of the communities the institutions serve. *See, e.g., PacWest Bancorp*, 102 *Federal Reserve Bulletin* 82, 88 (2015).

Bank's penetration rate for small businesses in LMI areas exceeded the average penetration rate by at least 3 percent in both 2014 and 2015. Further, Cathay asserts that Cathay Bank offers a number of loan products and programs targeted to small businesses, including micro loans in amounts ranging from $5,000 to $10,000 and unsecured revolving lines of credit with simple underwriting criteria that are offered in amounts ranging from $10,000 to $150,000. Cathay also represents that, contrary to one commenter's claim, Cathay Bank has made a number of loans to businesses owned by individuals of Southeast Asian origin and Latino-owned businesses.

Cathay notes that Cathay Bank's home mortgage loan operation is not large, representing only 25 percent of the bank's overall lending portfolio as of year-end 2015. Further, Cathay represents that mortgage loan penetration in the Los Angeles area is difficult considering the competitive environment and a very low percentage of owner-occupied housing. Nevertheless, Cathay represents that, as measured as a percentage of total lending, Cathay Bank's lending to low-income individuals is comparable to its peers. Cathay represents that another way it has tried to reach LMI and minority customers is through specific product and service offerings, including free or low-cost starter or second-chance bank accounts, and financial education programs. Cathay also represents that the bank offers a mortgage product for first-time homebuyers with lower fees, flexible terms, and lower down-payment requirements. Cathay also represents that some of these products are offered as part of a national program to move underbanked and unbanked individuals into the mainstream financial system and to improve access to financial education.

Cathay denies allegations that Cathay Bank engages in or rewards executives for redlining and asserts that these allegations are unfounded. Further, Cathay asserts that fair treatment of all of its customers and potential customers is an integral part of the bank's compliance management program. Cathay represents that this program includes ongoing fair lending and HMDA monitoring and testing; escalation and reporting of fair lending results to senior management; regular monitoring of customer complaints for potential fair lending concerns; and assessments for potential redlining, reverse redlining, and steering. In particular, Cathay represents that all applications are subject to a multilevel manager review prior to funding or denial to ensure that all lending decisions are made within the scope of the bank's fair lending policies. Cathay also represents that the bank's compliance department monitors and evaluates the effectiveness of these policies and procedures, including through an annual fair lending compliance monitoring review of mortgage and retail lending across all lines of business. Cathay further represents that the results of the bank's compliance monitoring activities are reported to the appropriate line of business, as well as the bank's chief risk officer, chief executive officer, president, and the board's risk and compliance committee.

Cathay represents that Cathay Bank branches are located in areas with high Asian populations and the bank has strong brand identification with Asian Americans; however, Cathay Bank also represents that the bank actively engages in outreach activities to other minority or ethnic populations, including by advertising in a variety of languages. Further, Cathay asserts that Cathay Bank does not turn away or otherwise exclude any mortgage applicants. According to Cathay, all applicants are reviewed using the bank's normal policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending and other consumer protection laws.

Cathay also represents that it and Cathay Bank have engaged organizations in California communities to determine the needs of those communities. Cathay further represents that, based on input from various community groups, as well as through Cathay Bank's community development efforts, Cathay Bank has identified affordable housing, small business training, and financial literacy as important needs in its assessment areas. Moreover, Cathay represents that, as a result, the bank's community development efforts have been focused, and will continue to focus, on these areas. Further, in October 2016, Cathay Bank announced multiyear goals and commitments related to community development lending, investments and services, charitable contributions, and residential mortgage lending and small business lending. As part of this announcement, Cathay Bank committed to work to increase and diversify mortgage loan originations over the course of four years with the goal that its percentages of mortgage originations to LMI individuals and census tracts, as well as to racial and ethnic minorities, are substantially comparable to the average of all lenders in the relevant assessment 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 applicant's response to 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, in this case, the FDIC 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 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 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;[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.

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24 *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 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 Cathay Bank

Cathay Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 7, 2016 ("Cathay Bank Evaluation").[28] The bank received a "Low Satisfactory" rating for the Lending Test and "High Satisfactory" ratings for both the Investment Test and the Service Test.[29] Although Cathay Bank's overall rating took into consideration its performance in each of its state and multistate metropolitan assessment areas, examiners gave the greatest weight to Cathay Bank's performance in California due to higher volume of activities in that state.[30] The Board has consulted with the FDIC regarding the Cathay Bank Evaluation.

Examiners found that Cathay Bank's overall lending activity reflected adequate responsiveness to the credit needs of its combined assessment area. Examiners noted that the bank was a leader in community development lending considering the bank's average asset size, financial ability, competition, and available opportunities. According to examiners, the bank's community development loans primarily supported affordable housing initiatives, community services, economic development, and revitalization or stabilization of communities. Examiners also found that the bank originated a substantial majority of loans inside of its assessment areas. Although examiners found that, overall, the bank's distribution of borrowers reflected poor penetration among retail customers of different income levels and business customers of different revenue sizes, they concluded that the bank exhibited an

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 Cathay 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 2014 and 2015. The evaluation period for community development lending, investments, and services was September 4, 2012, through March 7, 2016.

29 The Cathay Bank Evaluation included full-scope evaluations of nine assessment areas: Los Angeles, California (the Los Angeles–Long Beach–Glendale, California, Metropolitan Division ("MD"); the Anaheim-Santa Ana-Irvine, California, MD; and the Riverside-San Bernardino-Ontario, California, Metropolitan Statistical Area ("MSA"); San Francisco, California (the San Francisco-Redwood City-South San Francisco, California, MSA; the San Jose-Sunnyvale-Santa Clara, California, MSA; and the Oakland-Hayward-Berkeley, California, MD); New York/New Jersey (the Nassau County-Suffolk County, New York, MD; the New York-Wayne-White Plains, New York-New Jersey MD; and the Newark, New Jersey-Pennsylvania MD); Seattle, Washington (the Seattle-Bellevue-Everett, Washington, MD); Houston, Texas (the Houston-The Woodlands-Sugarland, Texas, MSA); Boston, Massachusetts (the Boston, Massachusetts, MD and the Cambridge-Newton-Framingham, Massachusetts, MD); Chicago, Illinois (the Chicago-Naperville-Arlington Heights, Illinois, MD); Las Vegas, Nevada (the Las Vegas-Henderson-Paradise, Nevada, MSA); Maryland (the Silver Spring-Frederick-Rockville MD); and the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia MD). Limited scope evaluations were performed in three assessment areas: Sacramento, California (the Sacramento-Roseville-Arden-Arcade, California, MSA); San Diego, California (the San Diego-Carlsbad, California, MSA); and Dallas, Texas (the Dallas-Plano-Irving, Texas, MD).

30 Cathay Bank received a "Satisfactory" overall rating in each of its state and multistate metropolitan assessment areas, except for Nevada and Maryland where it received ratings of "Substantial Non-Compliance." Because only a minor portion of the bank's overall lending, investments, and services were conducted in Nevada and Maryland, performance within each state received less weight in determining the bank's overall CRA rating. As described in more detail below, Cathay represents that the bank is working to improve its CRA performance in both states and has already made significant progress in doing so since the Cathay Bank Evaluation. Further, Cathay represents that the bank is a relatively recent entrant in, and has a limited presence in, each state.

adequate record of serving the credit needs of the most economically disadvantaged individuals and very small businesses. Examiners also noted that, overall, geographic distribution of the bank's loans was adequate.

In Cathay Bank's California assessment areas, the primary focus of concern for one commenter, examiners found Cathay Bank's lending activity reflected adequate responsiveness to credit needs. This was also the conclusion regarding the bank's Los Angeles assessment area, the area most affected by the proposed transaction and that was given the most weight for determining the bank's overall CRA rating.

Examiners found that, overall, the bank's geographic distribution of loans reflected adequate penetration throughout the California assessment areas, and no conspicuous lending gaps were noted. While examiners found geographic distribution of residential mortgage loans reflected poor penetration throughout the Los Angeles assessment area, they found geographic distribution of small business loans reflected good penetration. Examiners noted that, for 2014, the bank's percentage of small business loans in LMI census tracts in the assessment area exceeded the percentage of businesses in such census tracts. For 2015, examiners noted that the bank's percentage of small business loans exceeded the percentage of businesses in low-income census tracts in the assessment area and was consistent with the percentage of businesses in moderate income census tracts.

Examiners found that, overall, the bank's lending to businesses of different revenue sizes and borrowers of different income levels was poor in the California assessment areas;[31] however, Cathay Bank was found to be a leader in community development lending in the state. In the Los Angeles assessment area, for example, examiners found the bank to be excellent in community development lending and highlighted several loans to support affordable housing, businesses, and nonprofits in LMI areas. Further, examiners concluded that Cathay Bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its California assessment areas, low-income individuals, and very small businesses, consistent with safe and sound banking practices.

Examiners found that Cathay Bank made a significant level of qualified community development investments and grants within its assessment areas, particularly those that are not routinely provided by private investors. Examiners also noted that occasionally Cathay Bank took a leadership position with respect to these community development investments and grants. Examiners also noted that the bank exhibited good responsiveness to credit and community economic development needs. Examiners further observed that the bank made significant use of innovative or complex qualified investments to support community development initiatives. Examiners explained that the bank's investments included investments in affordable housing projects, community development financial institutions, and small business investment companies.

Additionally, examiners found that Cathay Bank's delivery systems were accessible to all portions of the bank's assessment areas, including LMI communities. To the extent that Cathay Bank had made changes to its branch network, examiners noted that the institution's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and/or LMI individuals. Examiners also found that the bank provided a relatively high level of community development services in its assessment areas.

[31] In the Los Angeles assessment area, examiners noted that nearly 13 percent of the assessment area's families live below the poverty level, which can adversely impact the ability of families to qualify for mortgage loans and the bank's ability to make mortgage loans based on normal underwriting standards.

Cathay Bank's Efforts Since the Cathay Bank Evaluation

Cathay represents that Cathay Bank has continued to demonstrate responsiveness to credit needs in the bank's assessment areas and continues to grow its CRA programs. Cathay asserts that the bank has made a number of community development loans and investments to support affordable housing and economic development in its assessment areas. Cathay notes that the bank has engaged in various outreach efforts and community service opportunities to support LMI persons and communities, as well as small businesses. Such efforts have included providing financial literacy courses to LMI individuals and technical assistance to small business owners.

Cathay represents that many of these community development loans and investments have been made in Cathay Bank's California assessment areas, where most of Cathay Bank's activities take place and the areas of primary concern for one commenter. In particular, Cathay represents that Cathay Bank has made a number of community development loans that promote economic development and investments that promote affordable housing. Further, Cathay represents that Cathay Bank has provided community service hours supporting financial literacy and small business development.

While receiving an overall "Satisfactory" rating at the Cathay Bank Evaluation, Cathay acknowledges that examiners identified weaknesses in Cathay Bank's CRA performance in its Nevada and Maryland assessment areas, but represents that the bank is making significant progress in addressing these weaknesses. Cathay notes that Cathay Bank entered both markets as a result of recent acquisitions and that the bank only has a single branch in each market. Cathay asserts that Cathay Bank has made significant strides since the Cathay Bank Evaluation to improve the CRA programs at each branch, and it is closely monitoring the programs' performance. According to Cathay, the bank's recent efforts in both assessment areas have included training programs for branch employees on the bank's CRA program, goals, and expectations, as well as meetings with community organizations to gain a better understanding of community credit needs. Cathay represents that its efforts have already led to a significantly increased CRA presence for each branch over previous levels, and that it is confident the bank's performance will continue to improve as it becomes more established in the areas.

CRA Performance of Far East Bank

Far East Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency, as of April 23, 2014 ("Far East Bank Evaluation").[32] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.

[32] The Far East Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures, consisting of the lending and community development tests. The institution's lending performance is based on its (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas, (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about its performance. The community development test evaluates the number and amount of the institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness through such activities to community development lending, investment, and service needs. The Far East Bank Examination reviewed the bank's small business loans originated during the period from January 1, 2012, through December 31, 2013, as well as a limited number of mortgage loans originated before the bank discontinued its mortgage operations in 2010. Examiners also reviewed community development loans, qualified investments, and community development services from March 1, 2010, through April 23, 2014. The Far East Bank Evaluation included a full-scope review of the bank's Los Angeles County and Alameda County assessment areas. Limited-scope reviews were conducted of the bank's Orange County, San Francisco County, and Santa Clara County assessment areas.

Examiners determined that Far East Bank's loan-to-deposit ratio exceeded the standard for satisfactory performance on the Lending Test given the bank's size, financial condition, and the credit needs of the bank's assessment areas. According to examiners, the bank's loan-to-deposit ratio compared favorably to peer institutions. Examiners also found that the bank originated a substantial majority of loans inside its assessment areas.

Examiners found that geographic distribution of the bank's loans reflected an excellent dispersion of loans in LMI areas. In the bank's Los Angeles assessment area, examiners also found that borrower distribution of small loans to businesses reflected a reasonable penetration to businesses with revenues of $1 million or less. In the bank's Alameda assessment area, examiners found that borrower distribution of loans to businesses reflected poor penetration of loans to businesses with revenues of $1 million or less, but noted that the bank only made a small volume of loans to businesses of any size. Examiners further explained that lending restrictions, competition, and limited branch staff hampered lending efforts in the Alameda assessment area.

Examiners found that the bank's overall performance in community development activities in its assessment area was "Outstanding." This conclusion was based on high levels of community development loans and community development investments, and an adequate level of retail and community development services. Examiners explained that the bank's community development loans and investments focused primarily on affordable housing and the bank's community services focused on financial literacy, which are both stated needs in the bank's assessment areas.

Views of Other Regulators

The Board has considered the record of Cathay Bank in complying with fair lending and other consumer protection laws, including the bank's policies and procedures relating to fair lending and other consumer protection laws and regulations. The FDIC and CFPB have each conducted consumer compliance examinations of Cathay Bank. The Board reviewed those examination reports and consulted with the FDIC and CFPB regarding Cathay Bank's record of compliance with fair lending laws and regulations. As part of its consumer compliance examination, the FDIC conducted a fair lending review focusing on residential mortgage lending. Concurrent with the FDIC's examination, the CFPB conducted a review of Cathay Bank's mortgage origination operations in order to determine compliance with applicable federal consumer financial laws, as well as Cathay Bank's system for managing compliance with these 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. Cathay represents that upon consummation of the proposal, existing customers of Far East Bank would have access to a more expansive line of products and services. Specifically, Cathay represents that existing customers of Far East Bank would gain access to a variety of consumer and commercial credit card products, personal automobile loans, and a variety of investment products and services offered by affiliates of Cathay Bank. Existing Far East Bank customers also would have access to a broader array of cash management products and services.

Cathay represents that the acquisition will make available expanded resources to the communities currently served by Far East Bank. Specifically, Cathay represents that customers of both institutions would benefit from a larger lending capacity and a higher lending limit. Cathay also represents that customers of both institutions would benefit from a more expansive branch network.[33]

Cathay represents that it has not made any decisions regarding closing branches, but it may consider closing or consolidating Cathay Bank or Far East Bank branches following consummation of the anticipated bank merger. Cathay represents that any such decisions would be based on a variety of factors, including proximity of locations, future prospects of branch locations from a cost and income perspective, and whether the branch would provide added benefit to the community. According to Cathay, location in a majority-minority or LMI area would be one factor taken into consideration. Moreover, Cathay represents that any branch closures would be completed in accordance with regulatory requirements associated with closing branches.[34]

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, consultations with the FDIC and CFPB, confidential supervisory information, information provided by Cathay, 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. Moreover, the Board expects Cathay to implement policies, programs, and activities to help meet community credit needs at a level commensurate with the expanded size and scope of the combined organization.

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."[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

[33] One commenter asserted that Cathay Bank should develop a Community Reinvestment Act Plan ("Plan") that addresses certain goals and meets the needs of specific segments of the community. This commenter urged the Board to approve the proposed transaction only if such a Plan is finalized. 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., Huntington Bancshares Incorporated*, 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.

[34] The Board notes that section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg.* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

[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).

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, 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 has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Cathay would have approximately $15.4 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or that results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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.[38] 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 Cathay 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 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

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

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

[38] 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 commenters have 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 and 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.

good cause by the Board or the Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective March 20, 2017

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Bank Merger Act

Farmers Bank & Capital Trust Company
Frankfort, Kentucky

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2017-02 (February 3, 2017)

Farmers Bank & Capital Trust Company ("Farmers Bank"), Frankfort, Kentucky, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to merge with its affiliated banks, United Bank & Trust Company, Versailles ("United Bank"), a state nonmember bank; First Citizens Bank, Elizabethtown, a state member bank; and Citizens Bank of Northern Kentucky, Inc., Newport ("Citizens Bank"), a state nonmember bank, all in Kentucky.[2] In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the main offices and branches of United Bank, First Citizens Bank, and Citizens Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] The time for filing comments has expired. The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[5] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[6]

Farmers Bank's proposal involves the consolidation of four banks that are affiliates in the same banking organization, and the proposal, therefore, would not lessen competition in any relevant market. The Board has received no objection to the proposal from the other federal banking agencies. Based on the record, the Board concludes that consummation of the proposed transaction would not be likely to result in a significantly adverse effect on competition or the concentration of banking resources in any banking market, and that competitive factors are consistent with approval.

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1 12 U.S.C. § 1828(c).

2 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank are wholly owned subsidiaries of Farmers Capital Bank Corporation, Frankfort, Kentucky ("FCBC").

3 12 U.S.C. § 321. These branches are listed in the appendix.

4 12 CFR 262.3(b).

5 12 U.S.C. § 1828(c)(5)(A).

6 12 U.S.C. § 1828(c)(5)(B).

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger 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 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. 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 consistently 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.

Farmers Bank is well capitalized and would remain so on consummation of the proposal. United Bank, First Citizens Bank, and Citizens Bank would be merged into Farmers Bank.[7] The asset quality, earnings, and liquidity of Farmers Bank are consistent with approval, and Farmers Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the operations of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Farmers Bank, including assessments of its management, risk-management systems, and operations, and has reviewed the examination records of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank. In addition, the Board has considered its supervisory experiences and those of the FDIC and the banks' record of compliance with applicable banking and anti-money laundering laws. The Board also has considered Farmers Bank's plans for implementing the proposal.

Farmers Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Farmers Bank would operate the acquired branches of United Bank, First Citizens Bank, and Citizens Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Farmers Bank's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Farmers Bank, as well as the records of effectiveness of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank in combating money-laundering activities, are consistent with approval.

7 In addition to United Bank, First Citizens Bank, and Citizens Bank, FCB Services, Inc., Frankfort, Kentucky ("FCB"), a nonbank subsidiary of FCBC, will be merged into Farmers Bank. FCB provides data processing services and related support. The merger of FCB into Farmers Bank is subject to approval under the Bank Merger Act and is being reviewed by the Federal Deposit Insurance Corporation ("FDIC").

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[8] 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"). 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,[9] 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.[10] In this regard, the federal financial supervisory agencies evaluate the performance of each institution in the context of the bank's product offerings, business strategy, and institutional capacity and constraints.[11]

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 applicant institution's business model, its marketing and outreach plans, the institution'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 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank, the fair lending and compliance records of all four banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Farmers Bank, and the public comments received on the proposal.

Public Comment on the Proposal

A commenter on the proposal expressed concern that the products and services of the involved banks might be reduced as a result of the bank merger and that access to physical branches might be diminished. This commenter also expressed concern about the planned change of name of Farmers Bank to United Bank & Capital Trust following the proposed transaction, suggesting the potential for customer confusion.

Response to the Comment

Farmers Bank represents that there will be no change to the product and service offerings of the four banks as a result of the proposed merger and that customers will continue to be able to access physical branches for their banking needs. Farmers Bank also represents that the name change is intended to distinguish Farmers Bank from several competitors with

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8 12 U.S.C. § 1828(c)(5)(B).

9 12 U.S.C. § 2901(b).

10 12 U.S.C. § 2903.

11 *See*, *e.g.*, 12 CFR 228.21(b).

similar names and that adequate notice of the name change was provided to customers of the four banks.

Record 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, as well as information and views provided by the appropriate federal supervisors.[12] 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.[13] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities. In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available Home Mortgage Disclosure Act data, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ("LTD") ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions, such as Farmers Bank, United Bank, and First Citizens Bank, are also subject to a community development test that evaluates the number and amount of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.[14]

CRA Performance of Farmers Bank

Farmers Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis ("Reserve Bank") in October 2014 ("Farmers Bank Evaluation").[15] Farmers Bank received "Satisfactory" ratings for both the lending test and the community development test.[16] Examiners determined that Farmers Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners found that a majority of Farmers Bank's loans and other lending-related activities were undertaken in the assessment area.

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

[13] 12 U.S.C. § 2906.

[14] *See* 12 CFR 228.26.

[15] The Farmers Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The Farmers Bank Evaluation reviewed lending data from July 1, 2013, to December 31, 2013, and community development activities from May 7, 2012, to October 27, 2014.

[16] The Farmers Bank Evaluation included reviews of the bank's activities in Franklin, Anderson, Mercer, and Boyle counties, all of which are located in a nonmetropolitan statistical area portion of the state of Kentucky.

Examiners also found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that Farmers Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

CRA Performance for United Bank

United Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in July 2015 ("United Bank Evaluation").[17] United Bank received "Satisfactory" ratings for both the lending test and the community development test.[18]

Examiners found United Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of United Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that United Bank demonstrated adequate responsiveness to the community development needs of its assessment area through community development loans and qualified investments.

CRA Performance of First Citizens Bank

First Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Reserve Bank in May 2016 ("First Citizens Bank Evaluation").[19] First Citizens Bank received "Satisfactory" ratings on the lending test and the community development test.[20]

Examiners determined that First Citizens Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners noted that a majority of First Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that First Citizens Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

[17] The United Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The United Bank Evaluation reviewed lending data from January 1, 2014, to May 31, 2015, and community development activities from July 2, 2012, to July 27, 2015.

[18] The United Bank Evaluation included reviews of the bank's activities in Fayette, Jessamine, Scott, and Woodford counties, Kentucky, all of which are located in the Lexington-Fayette, Kentucky metropolitan statistical area ("MSA").

[19] The First Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The First Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014, and community development activities from April 16, 2012, to May 9, 2016.

[20] The First Citizens Bank Evaluation included reviews of the bank's activities in Hardin County, Kentucky, which is located in the Elizabethtown-Fort Knox, Kentucky MSA, as well as Bullitt and Jefferson counties, Kentucky, which are located in the Louisville/Jefferson County, Kentucky-Indiana MSA.

CRA Performance of Citizens Bank

Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in May 2015 ("Citizens Bank Evaluation").[21] Citizens Bank received a "Satisfactory" rating for the lending test.[22]

Examiners found Citizens Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes.

Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Farmers Bank represents that the proposed transaction would provide customers of United Bank, First Citizens Bank, and Citizens Bank with more efficient services and expanded banking access. In addition, the merger would provide increased efficiencies and other savings, particularly in areas of management of personnel and operating expenses, risk management, strategic planning, regulatory compliance, and data processing. Customers of United Bank, First Citizens Bank, and Citizens Bank will continue to have access to existing banking services in each of the communities currently served by these banks, and there would be no change to the accessibility of all of the branches currently operated by those banks and Farmers Bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Farmers Bank, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank, its review of examination reports, and its consultations with the FDIC, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[23]

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[21] The Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Small Institutions, which consists of the lending test described above. The Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014.

[22] The Citizens Bank Evaluation included reviews of the bank's activities in Boone, Campbell, and Kenton counties, Kentucky, all of which are located in the Cincinnati-Middleton, Ohio-Kentucky-Indiana MSA.

[23] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

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.[24] 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.[25]

In this case, the Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that represents a corporate reorganization will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this case.

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

Establishment of Branches

Farmers Bank has applied under section 9 of the FRA to establish branches at the current locations of United Bank, First Citizens Bank, and Citizens Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[26] Specifically, the Board has considered Farmers Bank'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. For the reasons discussed in this order, the Board finds those factors to be 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 Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Farmers Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

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

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

[26] 12 U.S.C. § 322; 12 CFR 208.6.

Acquisition of United Bank, First Citizens Bank, and Citizens Bank may be consummated immediately upon the effective date of this order[27] but not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 3, 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 Acquired by Farmers Bank in Kentucky

1. Branches to Be Acquired from United Bank

- 100 United Drive, Versailles
  146 North Locust Street, Versailles
  206 North Grantz Street, Midway
  200 East Main Street, Georgetown
  100 North Bradford Lane, Georgetown
  100 Farmers Bank Drive, Georgetown
  3285 Main Street, Stamping Ground
  3098 Harrodsburg Road, Lexington
  2509 Sir Barton Way, Lexington
  201 North Main Street, Nicholasville
  995 South Main Street, Nicholasville
  986 North Main Street, Nicholasville
  106 South Lexington Avenue, Wilmore

2. Branches to Be Acquired from First Citizens Bank

- 425 West Dixie Avenue, Elizabethtown
  3030 Ring Road, Elizabethtown
  111 Towne Drive, Elizabethtown
  645 South Dixie Boulevard, Radcliff
  4810 North Preston Highway, Shepherdsville
  157 Eastbrooke Court, Mount Washington

3. Branches to Be Acquired from Citizens Bank

- 103 Churchill Drive, Newport
  7300 Alexandria Pike, Alexandria
  164 Fairfield Avenue, Bellevue
  8730 U.S. Highway 42, Florence
  34 North Fort Thomas Avenue, Fort Thomas
  2911 Alexandria Pike, Highland Heights
  2774 Town Center Boulevard, Crestview Hills

[27] 12 U.S.C. § 1828(c)(6).

Orders Issued Under Federal Reserve Act

Farmers Bank & Capital Trust Company
Frankfort, Kentucky

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2017-02 (February 3, 2017)

Farmers Bank & Capital Trust Company ("Farmers Bank"), Frankfort, Kentucky, a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[1] ("Bank Merger Act") to merge with its affiliated banks, United Bank & Trust Company, Versailles ("United Bank"), a state nonmember bank; First Citizens Bank, Elizabethtown, a state member bank; and Citizens Bank of Northern Kentucky, Inc., Newport ("Citizens Bank"), a state nonmember bank, all in Kentucky.[2] In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the main offices and branches of United Bank, First Citizens Bank, and Citizens Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] The time for filing comments has expired. The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.[5] The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.[6]

Farmers Bank's proposal involves the consolidation of four banks that are affiliates in the same banking organization, and the proposal, therefore, would not lessen competition in any relevant market. The Board has received no objection to the proposal from the other federal banking agencies. Based on the record, the Board concludes that consummation of the proposed transaction would not be likely to result in a significantly adverse effect on competition or the concentration of banking resources in any banking market, and that competitive factors are consistent with approval.

[1] 12 U.S.C. § 1828(c).

[2] Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank are wholly owned subsidiaries of Farmers Capital Bank Corporation, Frankfort, Kentucky ("FCBC").

[3] 12 U.S.C. § 321. These branches are listed in the appendix.

[4] 12 CFR 262.3(b).

[5] 12 U.S.C. § 1828(c)(5)(A).

[6] 12 U.S.C. § 1828(c)(5)(B).

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger 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 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. 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 consistently 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.

Farmers Bank is well capitalized and would remain so on consummation of the proposal. United Bank, First Citizens Bank, and Citizens Bank would be merged into Farmers Bank.[7] The asset quality, earnings, and liquidity of Farmers Bank are consistent with approval, and Farmers Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the operations of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Farmers Bank, including assessments of its management, risk-management systems, and operations, and has reviewed the examination records of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank. In addition, the Board has considered its supervisory experiences and those of the FDIC and the banks' record of compliance with applicable banking and anti-money laundering laws. The Board also has considered Farmers Bank's plans for implementing the proposal.

Farmers Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Farmers Bank would operate the acquired branches of United Bank, First Citizens Bank, and Citizens Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, Farmers Bank's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of Farmers Bank, as well as the records of effectiveness of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank in combating money-laundering activities, are consistent with approval.

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7 In addition to United Bank, First Citizens Bank, and Citizens Bank, FCB Services, Inc., Frankfort, Kentucky ("FCB"), a nonbank subsidiary of FCBC, will be merged into Farmers Bank. FCB provides data processing services and related support. The merger of FCB into Farmers Bank is subject to approval under the Bank Merger Act and is being reviewed by the Federal Deposit Insurance Corporation ("FDIC").

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[8] 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"). 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,[9] 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.[10] In this regard, the federal financial supervisory agencies evaluate the performance of each institution in the context of the bank's product offerings, business strategy, and institutional capacity and constraints.[11]

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 applicant institution's business model, its marketing and outreach plans, the institution'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 Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank, the fair lending and compliance records of all four banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Farmers Bank, and the public comments received on the proposal.

Public Comment on the Proposal

A commenter on the proposal expressed concern that the products and services of the involved banks might be reduced as a result of the bank merger and that access to physical branches might be diminished. This commenter also expressed concern about the planned change of name of Farmers Bank to United Bank & Capital Trust following the proposed transaction, suggesting the potential for customer confusion.

Response to the Comment

Farmers Bank represents that there will be no change to the product and service offerings of the four banks as a result of the proposed merger and that customers will continue to be able to access physical branches for their banking needs. Farmers Bank also represents that the name change is intended to distinguish Farmers Bank from several competitors with

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8 12 U.S.C. § 1828(c)(5)(B).
9 12 U.S.C. § 2901(b).
10 12 U.S.C. § 2903.
11 *See*, *e.g.*, 12 CFR 228.21(b).

similar names and that adequate notice of the name change was provided to customers of the four banks.

Record 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, as well as information and views provided by the appropriate federal supervisors.[12] 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.[13] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, onsite evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities. In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available Home Mortgage Disclosure Act data, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ("LTD") ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions, such as Farmers Bank, United Bank, and First Citizens Bank, are also subject to a community development test that evaluates the number and amount of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.[14]

CRA Performance of Farmers Bank

Farmers Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of St. Louis ("Reserve Bank") in October 2014 ("Farmers Bank Evaluation").[15] Farmers Bank received "Satisfactory" ratings for both the lending test and the community development test.[16] Examiners determined that Farmers Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners found that a majority of Farmers Bank's loans and other lending-related activities were undertaken in the assessment area.

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

13 12 U.S.C. § 2906.

14 *See* 12 CFR 228.26.

15 The Farmers Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The Farmers Bank Evaluation reviewed lending data from July 1, 2013, to December 31, 2013, and community development activities from May 7, 2012, to October 27, 2014.

16 The Farmers Bank Evaluation included reviews of the bank's activities in Franklin, Anderson, Mercer, and Boyle counties, all of which are located in a nonmetropolitan statistical area portion of the state of Kentucky.

Examiners also found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that Farmers Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

CRA Performance for United Bank

United Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in July 2015 ("United Bank Evaluation").[17] United Bank received "Satisfactory" ratings for both the lending test and the community development test.[18] Examiners found United Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of United Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that United Bank demonstrated adequate responsiveness to the community development needs of its assessment area through community development loans and qualified investments.

CRA Performance of First Citizens Bank

First Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Reserve Bank in May 2016 ("First Citizens Bank Evaluation").[19] First Citizens Bank received "Satisfactory" ratings on the lending test and the community development test.[20]

Examiners determined that First Citizens Bank's LTD ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners noted that a majority of First Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area and a reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes. Examiners concluded that First Citizens Bank's community development loan and investment record demonstrated adequate responsiveness to the community development needs in its assessment area.

[17] The United Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The United Bank Evaluation reviewed lending data from January 1, 2014, to May 31, 2015, and community development activities from July 2, 2012, to July 27, 2015.

[18] The United Bank Evaluation included reviews of the bank's activities in Fayette, Jessamine, Scott, and Woodford counties, Kentucky, all of which are located in the Lexington-Fayette, Kentucky metropolitan statistical area ("MSA").

[19] The First Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Intermediate Small Institutions, which consists of the lending and community development tests described above. The First Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014, and community development activities from April 16, 2012, to May 9, 2016.

[20] The First Citizens Bank Evaluation included reviews of the bank's activities in Hardin County, Kentucky, which is located in the Elizabethtown-Fort Knox, Kentucky MSA, as well as Bullitt and Jefferson counties, Kentucky, which are located in the Louisville/Jefferson County, Kentucky-Indiana MSA.

CRA Performance of Citizens Bank

Citizens Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC in May 2015 ("Citizens Bank Evaluation").[21] Citizens Bank received a "Satisfactory" rating for the lending test.[22]

Examiners found Citizens Bank's LTD ratio to be reasonable given the institution's size, financial condition, and assessment area credit needs. Examiners noted that a majority of Citizens Bank's loans and other lending-related activities were made in the assessment area. Examiners found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area, and the distribution of borrowers reflected reasonable penetration of loans among individuals of different income levels, including LMI individuals, and businesses of different sizes.

Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Farmers Bank represents that the proposed transaction would provide customers of United Bank, First Citizens Bank, and Citizens Bank with more efficient services and expanded banking access. In addition, the merger would provide increased efficiencies and other savings, particularly in areas of management of personnel and operating expenses, risk management, strategic planning, regulatory compliance, and data processing. Customers of United Bank, First Citizens Bank, and Citizens Bank will continue to have access to existing banking services in each of the communities currently served by these banks, and there would be no change to the accessibility of all of the branches currently operated by those banks and Farmers Bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Farmers Bank, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Farmers Bank, United Bank, First Citizens Bank, and Citizens Bank, its review of examination reports, and its consultations with the FDIC, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider a merger proposal's "risk to the stability of the United States banking or financial system."[23]

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[21] The Citizens Bank Evaluation was conducted using the Interagency CRA Procedures for Small Institutions, which consists of the lending test described above. The Citizens Bank Evaluation reviewed lending data from January 1, 2014, to December 31, 2014.

[22] The Citizens Bank Evaluation included reviews of the bank's activities in Boone, Campbell, and Kenton counties, Kentucky, all of which are located in the Cincinnati-Middleton, Ohio-Kentucky-Indiana MSA.

[23] Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

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.[24] 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.[25]

In this case, the Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that represents a corporate reorganization will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this case.

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

Establishment of Branches

Farmers Bank has applied under section 9 of the FRA to establish branches at the current locations of United Bank, First Citizens Bank, and Citizens Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.[26] Specifically, the Board has considered Farmers Bank'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. For the reasons discussed in this order, the Board finds those factors to be 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 Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by Farmers Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

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

[25] For further discussion of the financial stability standard, *seeCapital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

[26] 12 U.S.C. § 322; 12 CFR 208.6.

Acquisition of United Bank, First Citizens Bank, and Citizens Bank may be consummated immediately upon the effective date of this order[27] but not later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective February 3, 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 Acquired by Farmers Bank in Kentucky

1. Branches to Be Acquired from United Bank

- 100 United Drive, Versailles
  146 North Locust Street, Versailles
  206 North Grantz Street, Midway
  200 East Main Street, Georgetown
  100 North Bradford Lane, Georgetown
  100 Farmers Bank Drive, Georgetown
  3285 Main Street, Stamping Ground
  3098 Harrodsburg Road, Lexington
  2509 Sir Barton Way, Lexington
  201 North Main Street, Nicholasville
  995 South Main Street, Nicholasville
  986 North Main Street, Nicholasville
  106 South Lexington Avenue, Wilmore

2. Branches to Be Acquired from First Citizens Bank

- 425 West Dixie Avenue, Elizabethtown
  3030 Ring Road, Elizabethtown
  111 Towne Drive, Elizabethtown
  645 South Dixie Boulevard, Radcliff
  4810 North Preston Highway, Shepherdsville
  157 Eastbrooke Court, Mount Washington

3. Branches to Be Acquired from Citizens Bank

- 103 Churchill Drive, Newport
  7300 Alexandria Pike, Alexandria
  164 Fairfield Avenue, Bellevue
  8730 U.S. Highway 42, Florence
  34 North Fort Thomas Avenue, Fort Thomas
  2911 Alexandria Pike, Highland Heights
  2774 Town Center Boulevard, Crestview Hills

[27] 12 U.S.C. § 1828(c)(6).

PlainsCapital Bank
Dallas, Texas

Order Approving the Establishment of Branches
FRB Order No. 2017-05 (February 24, 2017)

PlainsCapital Bank, a state member bank subsidiary of Hilltop Holdings, Inc. ("Hilltop"), both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish two branches in Frisco, Texas.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.[4] The time for submitting comments has expired, and the Board has considered the proposal and the comments received in light of the factors specified in the FRA.

Hilltop is the 13th largest depository organization in Texas with 63 branches throughout Texas, controlling approximately $6.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.[5] PlainsCapital Bank operates only in Texas, and the bank's main office is in Dallas, Texas. PlainsCapital Bank's wholly owned nonbank subsidiary, PrimeLending, A PlainsCapital Company ("PrimeLending"), engages in national mortgage lending and has approximately 300 offices in 42 states.[6]

Under section 208.6 of the Board's Regulation H,[7] which implements section 9 of the FRA, the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[8] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[9]

The Board has considered the application in light of these factors and the public comment received on the proposal. One commenter objects to the proposal, alleging that PlainsCapital Bank discriminates against African Americans and "redlines" African American neighborhoods, particularly in the Dallas and Houston areas, both in Texas, with respect to its branching, marketing, lending, and community development activities.[10]

1 12 U.S.C. § 321.

2 12 CFR part 208.

3 PlainsCapital Bank proposes to establish one branch at One Cowboys Way and one branch at 6635 Cowboys Way, both in Frisco, Texas.

4 12 CFR 262.3(b).

5 State deposit data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

6 PlainsCapital Bank represents that the vast majority of its residential mortgage lending is conducted through PrimeLending.

7 12 CFR 208.6(b).

8 12 U.S.C. § 2901 *et seq* .

9 12 CFR 208.21(a).

10 Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. *See* Interagency Fair Lending Examination Procedures (August 2009), available at https//www.ffiec.gov/pdf/fairlend.pdf.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of PlainsCapital Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by PlainsCapital Bank, and the comment received on the proposal. PlainsCapital Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of PlainsCapital Bank are consistent with approval, and PlainsCapital Bank appears to have adequate resources to absorb the costs of the proposal. In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed PlainsCapital Bank's proposed investment in the branches and concludes that its investment is consistent with regulatory limitations on investment in bank premises.[11]

In considering PlainsCapital Bank's managerial resources, the Board has reviewed the bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with PlainsCapital Bank and the bank's record of compliance with applicable banking laws, including consumer protection and anti-money-laundering laws. PlainsCapital Bank is considered to be well managed. PlainsCapital Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and the bank's risk-management program appears consistent with approval.

Based on this review and all the facts of record, the Board concludes that PlainsCapital Bank's management, financial history and condition, capital adequacy, and future earnings prospects, as well as the effectiveness of PlainsCapital Bank in combatting money-laundering activities, are consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.[12] In this evaluation, the Board places particular emphasis on the record of the relevant depository institution 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,[13] 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.[14]

In addition, the Board considers the bank's overall compliance record and the results of 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

[11] 12 CFR 208.21(a).
[12] 12 CFR 208.6(b)(3).
[13] 12 U.S.C. § 2901(b).
[14] 12 U.S.C. § 2903.

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 PlainsCapital Bank; the fair lending and compliance records of the bank; confidential supervisory information; information provided by PlainsCapital Bank; and the public comment received on the proposal. One commenter objects to the proposal, alleging that PlainsCapital Bank has engaged in discriminatory practices in Dallas and Houston. Specifically, the commenter alleges that PlainsCapital Bank engages in redlining in these areas.The commenter alleges that PlainsCapital Bank disfavors certain African American neighborhoods in Dallas and Houston and has limited its lending, marketing activities, community development activities, and branching in those neighborhoods.

PlainsCapital Bank denies the commenter's allegations, arguing that it has a strong commitment to ensuring compliance with consumer laws and a strong lending record under the Home Mortgage Disclosure Act ("HMDA"), and that the bank and PrimeLending both have comprehensive policies and procedures to ensure that they do not engage in discriminatory practices. PlainsCapital Bank represents that these policies and procedures include controls to determine if disparities exist regarding pricing and fees, analysis of approved and denied loans, and frequent fair lending reviews. PlainsCapital Bank also represents that its board of directors has a designated CRA/Compliance Committee that provides enhanced oversight to both the bank's and PrimeLending's compliance programs.

PlainsCapital Bank notes that it is a relatively recent entrant to the Houston area and only has two branches in the area, as it entered the market in late 2013 through the acquisition of a failed bank. PlainsCapital Bank represents that one of those two branches is located in a majority-minority area. While Houston is currently its smallest market, PlainsCapital Bank represents that it is actively working to expand the bank's presence in the community. PlainsCapital Bank asserts that, over the last two years, it has assembled a strong team of lenders, credit underwriters and loan administration staff, and it recently hired a new Houston market president. PlainsCapital Bank represents that, as a result of these efforts, the bank has expanded its loan portfolio in the Houston area by approximately 73 percent in 2015 and 31 percent in 2016, and continuously evaluates opportunities to further expand its presence in the market. Further, PlainsCapital Bank represents that it and PrimeLending engage in marketing and outreach, including targeted radio and advertising campaigns, to achieve lending penetration in LMI and minority census tracts.

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 and other supervisory information and information and views provided by the appropriate federal supervisors.[15] In this case, the Board considered the information collected by and findings of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank"), who conducted an on-site CRA performance evaluation of PlainsCapital Bank.

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

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.[16] 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, 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 loans based on borrower characteristics, including for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[17] (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 commenters assert that 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 typically is not available to commenters.[18] Consequently, these alleged disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of PlainsCapital Bank

PlainsCapital Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of July 7, 2015 ("PlainsCapital Bank

[16] 12 U.S.C. § 2906.

[17] Examiners also consider the number and amounts of small business and small farm loans made 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).

[18] 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.

Evaluation").[19] PlainsCapital Bank received a "High Satisfactory" rating for the Lending Test and a "Low Satisfactory" rating for both the Investment Test and the Service Test.[20]

Examiners found that PlainsCapital Bank's overall lending activity reflected good responsiveness to credit needs in its assessment areas and that the bank made a high percentage of its loans inside its assessment areas. According to examiners, the bank's geographic distribution of loans reflected adequate penetration throughout the assessment areas. Examiners also found that, overall, the bank's distribution of borrowers reflected good penetration among customers of different income levels and businesses of different sizes. Further, examiners noted that the bank made a relatively high level of community development loans, the majority of which were for affordable housing and economic development. Community development loans were also made to organizations providing services targeted to LMI individuals.

In the Dallas assessment area, an area where the commenter focused, examiners determined that PlainsCapital Bank exhibited good lending performance. The bank's geographic distribution of loans was judged to reflect adequate penetration throughout the assessment area, with no conspicuous lending gaps. Examiners also found that the bank's lending performance reflected good penetration among individuals of different income levels and businesses of different sizes. Further, examiners noted that PlainsCapital Bank made a relatively high level of community development loans in the assessment area, which were to a variety of projects for affordable housing and the revitalizing and stabilizing of LMI areas.

PlainsCapital Bank has only recently entered the Houston banking market and has a limited presence in the Houston assessment area, another area of concern to the commenter. Examiners noted that the bank maintains only 3 percent of its total number of branches and holds only 3.5 percent of its total deposits in the market. The PlainsCapital Bank Evaluation included a limited-scope review of lending activity by PlainsCapital Bank in the Houston assessment area. Examiners concluded that PlainsCapital Bank's lending performance in the Houston assessment area was better than its lending performance in other assessment areas. The bank's geographic distribution of loans was judged to reflect good penetration throughout the assessment area. Examiners also found that the bank's lending performance reflected good penetration among borrowers of different income levels and businesses of different sizes. Further, examiners found that the bank made a high level of community development loans in the assessment area.

[19] The PlainsCapital Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA, small business, and small farm lending activities reported by the bank from January 1, 2013, through December 31, 2014, except for those reported by Southwest Securities, FSB, a bank that was merged into PlainsCapital Bank on January 1, 2015, and which had an evaluation period from July 1, 2013, through December 31, 2014. The evaluation period for community development lending, investments, and services was June 3, 2013, through July 7, 2015.

[20] The PlainsCapital Bank Evaluation included a full-scope review of the bank's assessment areas within the following Metropolitan Statistical Areas ("MSAs"): the Dallas-Fort Worth-Arlington, Texas, MSA ("Dallas assessment area"); the Lubbock, Texas, MSA; the McAllen-Edinburg-Mission, Texas, MSA; and the Brownsville-Harlingen, Texas, MSA. A limited-scope review was conducted in the bank's assessment areas within the Austin-Round Rock, Texas, MSA; the San Antonio-New Braunfels, Texas, MSA; the Houston-The Woodlands-Sugar Land, Texas, MSA ("Houston assessment area"); the El Paso, Texas, MSA; the Corpus Christi, Texas, MSA; the Laredo, Texas, MSA; the Victoria, Texas, MSA; Jim Wells County, Texas; and Maverick County, Texas.

The commenter alleged that PlainsCapital Bank's definitions of the Houston and Dallas assessment areas arbitrarily exclude African American neighborhoods in the Houston and Dallas areas. The Board's regulations prohibit the delineation of a CRA assessment area that reflects illegal discrimination. 12 CFR 228.41(e)(2). Assessment areas generally should include entire political subdivisions. Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48549 (July 25, 2016). The Houston assessment area comprises the entirety of Harris and Montgomery counties. The Dallas assessment area comprises the entirety of Collin, Denton, Dallas, Parker, and Tarrant counties. Reserve Bank examiners found that the bank's assessment areas were appropriate and offered opportunities to lend in majority-minority geographies.

Examiners found that PlainsCapital Bank provided an adequate level of qualified community development investments and donations in its assessment areas. Examiners noted that PlainsCapital Bank's investments demonstrated adequate responsiveness to credit and community development needs throughout its assessment areas. However, examiners found that PlainsCapital Bank's investment performance varied among its assessment areas, with the majority of its investments concentrated in the Dallas assessment area.

In the Dallas assessment area, examiners determined that PlainsCapital Bank provided an excellent level of qualified community development investments and responsiveness to credit and community needs. Examiners noted that the investments provided support for small businesses and affordable housing, and that community contacts had identified the need for and opportunities to make such investments. Examiners also found that the bank made donations to various organizations that provide support services to LMI individuals. In the Houston assessment area, examiners concluded that PlainsCapital Bank's investment performance was consistent with its bank-wide investment performance.

Examiners found that PlainsCapital Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels in its assessment areas. Examiners further noted that PlainsCapital Bank's opening and closing of branches did not adversely affect the accessibility of banking services, particularly to LMI geographies and/or individuals. Further, examiners found that the banking services and business hours did not vary in a way that inconvenienced any portion of the bank's assessment areas, particularly LMI geographies and individuals. However, examiners found that PlainsCapital Bank provided only a limited level of community development services that benefited all of its assessment areas and that such services were concentrated in the Dallas assessment area.

In the Dallas assessment area, examiners concluded that PlainsCapital Bank provided a relatively high level of community development services. Examiners also found that PlainsCapital Bank's delivery systems were accessible to the bank's geographies and to individuals of different income levels in the assessment area and services did not vary in a way that would inconvenience LMI geographies or individuals. In the Houston assessment area, examiners concluded that PlainsCapital Bank's service performance was consistent with its bank-wide service performance.

PlainsCapital Bank's Efforts since the 2015 CRA Evaluation

PlainsCapital Bank represents that since the PlainsCapital Bank Evaluation, it has continued to offer several lending and deposit products specifically designed for LMI populations that are utilized by individuals and businesses in LMI and/or minority census tracts, including in its Houston and Dallas assessment areas. Such products include a closing-cost assistance program offered by PrimeLending and its "Simply Free" and "Business Free" checking accounts, which are consumer and business checking accounts with no minimum balance or monthly fees. PlainsCapital Bank also participates in the Federal Home Loan Bank of Dallas Homebuyer Equity Leverage Partnership, which provides low-income, qualified first-time homebuyers with down-payment assistance.

PlainsCapital Bank represents that it has continued its strong commitment to serving the banking needs of its assessment areas, including the Houston and Dallas assessment areas, through community development lending, investments, and services. For example, the bank represents that it has made community development loans that provided funding for small businesses and supported affordable housing projects, including a loan to support an affordable housing complex in an LMI, majority-minority census tract within the Houston assessment area. PlainsCapital Bank also represents that it has made a number of community development investments that supported affordable housing developments in LMI areas, including within the Dallas and Houston assessment areas. The bank represents that it has continued to make donations to organizations that focus on providing services to LMI and minority individuals and communities. Additionally, PlainsCapital Bank represents that bank employees have actively participated in a variety of volunteer activities in its assessment areas, such as financial literacy classes at local schools in Dallas and Houston, including schools with primarily LMI and minority students.

Additional Supervisory Views

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

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. PlainsCapital Bank represents that the proposed branches would provide benefits to the bank's current customers and to the community as a whole. Both branches will be in Collin County, Texas, where the bank currently only has a single branch. The bank asserts that the proposed branches will be in a pedestrian-friendly area and will increase the accessibility of the bank's products and services, particularly to retail customers.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of PlainsCapital Bank and its recent entry into the Houston banking market; the bank's record of compliance with fair lending and other consumer protection laws; confidential supervisory information; information provided by PlainsCapital Bank; 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

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. The Board's approval is specifically conditioned on PlainsCapital Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. 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.

Approval of this application is also subject to the establishment of the proposed branches within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective February 24, 2017.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board