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Legal Developments: First Quarter, 2018

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Howard Bancorp, Inc.
Ellicott City, Maryland

Order Approving the Acquisition of a Bank
FRB Order No. 2018-05 (February 12, 2018)

Howard Bancorp, Inc. ("Howard"), Ellicott City, Maryland, 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 First Mariner Bank ("FM Bank"), Baltimore, Maryland. FM Bank would be merged into Howard's subsidiary bank, Howard Bank, Ellicott City, Maryland.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 48081 (October 16, 2017)).[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.

Howard, with consolidated assets of approximately $1.1 billion, is the 655th largest insured depository organization in the United States. Howard controls approximately $870.1 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Howard controls Howard Bank, which operates only in Maryland.[6] Howard is the 18th largest insured depository organization in Maryland, controlling deposits of approximately $810.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[7]

FM Bank, with assets of approximately $975.2 million, operates only in Maryland. FM Bank is the 19th largest insured depository organization in Maryland, controlling deposits

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 The merger of FM Bank into Howard Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on January 31, 2018.
4 12 CFR 262.3(b).
5 National asset and deposit data are as of June 30, 2017, unless otherwise noted.
6 The proposal does not raise interstate issues under section 3(d) of the BHC Act because Maryland is the home state of Howard, and FM Bank is located only in Maryland. *See* 12 U.S.C. §1842(d).
7 State deposit data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

of approximately $770.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Howard would become the 384th largest depository organization in the United States, with consolidated assets of approximately $2.1 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Howard would control consolidated deposits of approximately $1.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maryland, Howard would become the 12th largest depository organization, controlling deposits of approximately $1.6 billion, which represent 1.2 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.[8] 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.[9]

Howard Bank and FM Bank compete directly in the Annapolis, Maryland, banking market (“Annapolis market”) and the Baltimore, Maryland, banking market (“Baltimore 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 each market; the relative share of total deposits in insured depository institutions in each market (“market deposits”) that Howard 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 Annapolis and Baltimore markets.

8 12 U.S.C. § 1842(c)(1).

9 12 U.S.C. § 1842(c)(1)(B).

10 The Annapolis market is defined as Anne Arundel County (excluding District 7) and Queen Anne’s County, both of Maryland. The Baltimore market is defined as Baltimore City and Baltimore, Carroll, Harford, and Howard counties (excluding the Clarksville and Savage districts), all of Maryland.

11 Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group ,* 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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.

On consummation of the proposal, the Annapolis and Baltimore markets would each remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in these markets would be small, and numerous competitors would remain in each banking market.[13]

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 Annapolis or Baltimore 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.[14] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Howard and FM Bank are both well capitalized, and the combined organization would remain so on consummation of the proposed transaction. The proposed transaction is structured primarily as an exchange of shares, with a subsequent merger of depository

[13] Howard operates the 25th largest depository institution in the Annapolis market, controlling approximately $26.3 million in deposits, which represent 0.24 percent of market deposits. FM Bank is the 17th largest depository institution in the same market, controlling deposits of approximately $91.2 million, which represent approximately 0.82 percent of market deposits. On consummation of the proposed transaction, Howard would become the 15th largest depository organization in the market, controlling deposits of approximately $117.5 million, which represent approximately 1.05 percent of market deposits. The HHI for the Annapolis market would increase by 1 point to 1110, and 30 banking organizations would remain in the market.

Howard operates the 8th largest depository institution in the Baltimore market, controlling approximately $657.3 million in deposits, which represent 1.25 percent of market deposits. FM Bank is the 7th largest depository institution in the same market, controlling deposits of approximately $678.8 million, which represent approximately 1.29 percent of market deposits. On consummation of the proposed transaction, Howard would become the 7th largest depository organization in the market, controlling deposits of approximately $1.34 billion, which represent approximately 2.54 percent of market deposits. The HHI for the Baltimore market would increase by 3 points to 1789, and 43 banking organizations would remain in the market.

[14] 12 U.S.C. § 1842(c)(2), (5), and (6).

institutions.[15] The asset quality, earnings, and liquidity of Howard Bank and FM Bank are consistent with approval, and Howard appears to have adequate resources to absorb the related costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

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

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

The Board also has considered Howard's plans for implementing the proposal. Howard 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. Howard would implement its risk-management policies, procedures, and controls at the combined organization and may augment these policies, procedures, and controls based on the needs of the combined organization. Howard's risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Howard's management has the experience and resources to operate the combined organization in a safe and sound manner, and Howard plans to integrate FM Bank's existing management and personnel in a manner that augments Howard's management.[16]

Based on all the facts of record, including Howard'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 Howard and FM Bank in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[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 these communities, as well as other potential effects of the proposal on the

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[15] To effect the transaction, each share of FM Bank common and Series A preferred stock would be converted into a right to receive Howard common stock, based on an exchange ratio. Certain warrants and options granted by FM Bank would be cancelled and converted into the right to receive a cash amount. Howard has the financial resources to effect the proposed transaction.

[16] Following consummation of the proposed transaction, Howard's board of directors will consist of fourteen directors, including eight of the thirteen members now on Howard's board and six members chosen by FM Bank from FM Bank's current board.

[17] 12 U.S.C. § 1842(c)(2).

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").[18] 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 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 Howard Bank and FM Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Howard, and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of the fair lending and CRA performances of Howard Bank and FM Bank. Specifically, the commenter alleged that the banks have a poor record of lending and investing in African American and other minority communities in Baltimore and Maryland. The commenter requested that approval of the proposal be conditioned on Howard (i) meeting with members of the African American community in Baltimore to determine how Howard can better meet the community's capital needs and (ii) adopting a forward-looking CRA plan that includes commitments to increase lending to minorities in Baltimore, invest in African American communities in Baltimore, and increase the number of branches in African American communities in Baltimore.[21]

Businesses of the Involved Institutions and Response to the Public Comment

Howard Bank provides a broad range of financial products and services to consumers and businesses, with an emphasis on serving local markets and small- and medium-sized businesses. Through its network of branches in Maryland, Howard Bank offers a variety of

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[18] 12 U.S.C. § 2901 *et seq*.

[19] 12 U.S.C. § 2901(b).

[20] 12 U.S.C. § 2903.

[21] The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. *See*, *e.g.*, *United Bancshares, Inc.*, FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 fn. 50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 fn. 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.

products and services, including checking, savings, money market, and certificate of deposit accounts; commercial, residential, and consumer loans; business checking and savings accounts; and credit card and merchant card services.

FM Bank offers a range of retail and commercial banking products and services through its branches in Maryland. Its products and services include checking, savings, money market, and certificate of deposit accounts; a variety of business accounts; merchant card services; and treasury management.

Howard disputes the commenter's allegations and asserts that approval of the proposed transaction is warranted based on the banks' CRA performance evaluations, Howard Bank's recent lending activities in Baltimore, and Howard Bank's involvement in other collective efforts to address financial conditions in Baltimore. Howard asserts that Howard Bank and FM Bank have consistently met the requirements of the CRA and that Howard Bank is committed to continuing to meet the goals of the CRA after consummation of the transaction. Howard notes that as part of Howard Bank's and FM Bank's CRA performance evaluations, FDIC examiners found that the banks' activities to meet the credit needs of LMI communities were satisfactory.

Howard represents that Howard Bank is currently engaged in several CRA-related activities that have been recognized in its most recent CRA performance evaluation and participates in meetings with government officials, other financial institutions, and community groups to discuss credit and investment needs in Baltimore. Howard also represents that Howard Bank has been an active home mortgage and small business lender in Baltimore 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 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.[22] In this case, the Board considered the supervisory views of the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[23] 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 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

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

[23] 12 U.S.C. § 2906.

Act,[24] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA Assessment Areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[25] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.[26] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[27] Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts 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.[28]

CRA Performance of Howard Bank

Howard Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of November 2, 2015 ("Howard Bank Evaluation").[29] The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.[30]

Examiners found that the bank made a majority of its home mortgage loans and small business loans in its three AAs. Examiners determined that the bank's borrower profile revealed reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its AAs. Examiners noted that the bank's loan-to-deposit ratio was more than reasonable given its size, financial condition, and its AAs' credit needs. Examiners found that Howard Bank's overall performance under the Community Development Test demonstrated adequate responsiveness to the community

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[24] 12 U.S.C. § 2801 *et seq*.

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

[26] *See* 12 CFR 228.22(b).

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

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

[29] The Howard Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the lending test and the community development test. The Howard Bank Evaluation reviewed residential mortgage loans from January 1, 2013, through September 30, 2015; small business loans from January 1, 2013, through November 2, 2015; and community development activities from April 19,2012, to November 2,2015.

[30] The Howard Bank Evaluation reviewed the bank's activities in the Baltimore-Columbia-Towson, Maryland, Metropolitan Statistical Area ("MSA"); the Philadelphia-Camden-Wilmington, Pennsylvania-New Jersey-Delaware-Maryland, MSA; and the Lancaster, Pennsylvania, MSA. At the time of the Howard Bank Evaluation, Howard Bank maintained a branch in Pennsylvania, which it has since closed.

development needs of its AAs, considering the capacity and availability of opportunities for community development in the AAs.

In the Baltimore-Columbia-Towson, Maryland MSA (the "Baltimore MSA"), which includes the area of concern to the commenter, examiners found that the geographic distribution of Howard Bank's loans reflected a reasonable distribution throughout the AA. Examiners found that, during 2014 and 2015, Howard Bank substantially increased its home mortgage lending volume in the Baltimore MSA and substantially increased the percentage of its home mortgage loans in LMI census tracts in the Baltimore MSA, which reflected a positive trend. Examiners also determined that Howard Bank's small business lending in the Baltimore MSA reflected reasonable geographic distribution throughout the AA. Examiners found that the distribution of Howard Bank's borrowers within the Baltimore MSA reflected reasonable penetration among individuals of different income levels and businesses of different sizes. Examiners determined that Howard Bank demonstrated adequate responsiveness to the community development needs of its AA in the Baltimore MSA through community development loans, qualified investments, and community development services.

Howard Bank's Efforts since the Howard Bank Evaluation

Howard represents that, since the Howard Bank Evaluation, Howard Bank has continued, and in some cases expanded, its mortgage and small business lending, community development investments, and services in Baltimore in ways that confirm the bank's commitment to the goals of the CRA. Specifically, Howard represents that Howard Bank has made a substantial number and amount of mortgage and small business loans in Baltimore City, including loans to minority and LMI borrowers. Howard further represents that Howard Bank has used innovative and flexible loan programs to address the needs of LMI borrowers in its community. In addition, Howard represents that Howard Bank has participated in state and local programs that are designed to enhance mortgage lending to LMI borrowers. Howard also represents that Howard Bank has been active in community development lending and has made significant investments in LMI communities in the Baltimore area.

CRA Performance of FM Bank

FM Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of June 27, 2015 ("FM Bank Evaluation").[31] The bank received a "Low Satisfactory" rating for the Lending Test, a "High Satisfactory" rating for the Investment Test, and an "Outstanding" rating for the Service Test.[32]

Examiners concluded that FM Bank's lending activity reflected good responsiveness to the credit needs of its AA. Although examiners noted that the bank's level of home mortgage lending to low-income borrowers was not commensurate with the percentage of low-income families in its AA, examiners concluded that the bank's borrower profile reflected good penetration among borrowers of different income levels (including LMI

[31] Although FM Bank is classified as an Intermediate Small Bank, the FM Bank Evaluation was conducted using Large Bank Examination Procedures at the request of FM Bank's management. Examiners reviewed home mortgage and small business loans from January 1,2013, through March 31,2015. The evaluation period for community development loans, investments, and services was from November 2,2012, through July 27,2015.

[32] The FM Bank Evaluation included a full-scope evaluation of one AA that includes the Baltimore-Columbia-Towson, Maryland, MSA; the Washington-Arlington-Alexandria, District of Columbia-Virginia-Maryland-West Virginia, MSA; and the California-Lexington Park, Maryland, MSA. The bank's entire AA is within the Washington-Baltimore-Arlington, District of Columbia-Maryland-Virginia-West Virginia-Pennsylvania, Combined Statistical Area.

borrowers). Examiners noted that the bank's home mortgage lending performance in LMI geographies fell just below the aggregate's performance in LMI geographies in its AA. However, examiners found that market share data and FM Bank's lending performance in LMI geographies, when compared to the bank's peers, supported the conclusion that the geographic distribution of the bank's home mortgage lending was adequate. With respect to business lending, examiners found that the bank's lending to businesses of different sizes reflected good penetration and that the bank's performance with respect to small business lending in LMI geographies was excellent. Examiners also determined that the bank made an adequate level of community development loans, including in Baltimore County and Baltimore City, Maryland, both areas of concern to the commenter. Examiners found that the bank made extensive use of innovative and flexible loan products in order to serve the credit needs of the AA and highlighted the bank's use of innovative and flexible loan programs in Baltimore County and Baltimore City, Maryland.

Examiners found that the bank made and maintained a significant level of qualified community development investments and donations. The bank's qualified investments were found to exhibit good responsiveness to credit and community economic development needs, most of which support development of affordable housing.

Examiners concluded that FM Bank's retail delivery systems were accessible to essentially all portions of its AA, including LMI geographies, and that services did not vary in a way that inconvenienced portions of its AA. Moreover, examiners found the bank to be a leader in providing community development services throughout its AA.

FM Bank's Efforts since the FM Bank Evaluation

Howard represents that since the FM Bank Evaluation, FM Bank has continued, and in some cases expanded, its mortgage and small business lending, community development investments, and services in Baltimore, including with respect to minority and LMI borrowers and geographies. Howard further represents that FM Bank has used innovative and flexible programs to enhance its lending to LMI borrowers. Howard represents that FM Bank has been active in community development lending and has made significant investments in LMI communities in the Baltimore area.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Howard Bank's and FM Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examinations of Howard Bank and FM Bank, which included evaluations of the banks' compliance management systems and the banks' compliance with consumer protection laws, including fair lending laws and regulations. Examiners also conducted transaction testing and fair lending reviews for both banks.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Howard 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 the communities within its AAs.

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. Howard represents that, following consummation of the proposal, existing customers of Howard Bank and FM Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services. Howard represents that existing customers of FM Bank also would benefit from issuance of a new debit card that is more fraud preventative than the current FM Bank debit card and by gaining access to mobile banking for business services and to Small Business Administration loan products.

Howard represents that Howard Bank would not discontinue any material products or services currently provided by FM Bank. Further, Howard represents that Howard Bank intends to continue all of FM Bank's CRA-related activities, although some activities would be integrated into Howard Bank's existing program. In addition, Howard represents that Howard Bank intends to continue to participate in a leadership role in FM Bank's current community initiatives in the metropolitan Baltimore area.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater 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 United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[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

[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 United States financial system.

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]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[36]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.[37] The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

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

By order of the Board of Governors, effective February 12, 2018.

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

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

[37] Howard and FM Bank offer a range of retail and commercial banking products and services. Howard has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard

Margaret McCloskey Shanks
Deputy Secretary of the Board

First Financial Bancorp
Cincinnati, Ohio

First Financial Bank
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, and Determination on a Financial Holding Company Election
FRB Order No. 2018-07 (February 22, 2018)

First Financial Bancorp ("First Financial"), Cincinnati, Ohio, 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 merge with MainSource Financial Group, Inc. ("MainSource"), and thereby indirectly acquire MainSource Bank, both of Greensburg, Indiana.

In addition, First Financial's subsidiary state member bank, First Financial Bank, Cincinnati, Ohio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with MainSource Bank, with First Financial Bank as the surviving entity.[3] First Financial Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of MainSource Bank.[4]

In connection with this proposal, First Financial also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (*l*) of the BHC Act and section 225.82 of the Board's Regulation Y.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 195 (October 11, 2017)).[6] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger of First Financial Bank and MainSource Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

First Financial, with consolidated assets of approximately $8.8 billion, is the 149th largest insured depository organization in the United States. First Financial controls approximately $6.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] First Financial controls First Financial Bank, which operates in Indiana, Kentucky, and Ohio. First Financial is the 14th largest insured depository organization in Indiana, controlling deposits of approximately $2.8 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state. First Financial is the 71st largest insured depository organization in Kentucky, controlling deposits of approximately $187.7 million,

1 12 U.S.C. § 1841 *et seq.*
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in Appendix A.
5 12 U.S.C. § 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 Nationwide asset and deposit data are as of September 30, 2017, unless otherwise noted.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8] First Financial is the 11th largest insured depository organization in Ohio, controlling deposits of approximately $3.6 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

MainSource, with consolidated assets of approximately $4.6 billion, is the 218th largest insured depository organization in the United States. MainSource controls approximately $3.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MainSource controls MainSource Bank, which operates in Illinois, Indiana, Kentucky, and Ohio. MainSource is the 233rd largest insured depository organization in Illinois, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 17th largest insured depository organization in Indiana, controlling deposits of approximately $2.3 billion, which represent 1.8 percent of the total deposits of insured depository institutions in that state. MainSource is the 31st largest insured depository organization in Kentucky, controlling deposits of approximately $486.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 41st largest insured depository organization in Ohio, controlling deposits of approximately $613.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Financial would have consolidated assets of approximately $13.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States.[9] First Financial would control total deposits of approximately $10.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, First Financial would become the 233rd largest insured depository organization, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Indiana, First Financial would become the 6th largest insured depository organization, controlling deposits of approximately $5.1 billion, which represent 4.1 percent of the total deposits of insured depository institutions in that state. In Kentucky, First Financial would become the 24th largest insured depository organization, controlling deposits of approximately $674.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Ohio, First Financial would remain the 11th largest insured depository organization, controlling deposits of approximately $4.2 billion, which represent approximately 1.2 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.[10] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited

8 State deposit data are as of June 30, 2017, unless otherwise noted.

9 Excluding purchase accounting adjustments, First Financial would become the 109th largest insured depository institution in the United States, with consolidated assets of approximately $13.4 billion.

10 12 U.S.C. § 1842(d)(1)(A).

under state law.[11] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[12] In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

For purposes of the BHC Act, the home state of First Financial is Ohio, and MainSource Bank is located in Illinois, Indiana, Kentucky, and Ohio.[14] For purposes of section 44 of the FDI Act, the home state of First Financial Bank is Ohio, and the home state of MainSource Bank is Indiana. First Financial and First Financial Bank are well capitalized and well managed under applicable law, and First Financial Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Neither Indiana nor Kentucky has statutory minimum age requirements,[16] and MainSource Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Kentucky imposes a 15 percent limit on the total amount of in-state deposits that a single banking organization may control.[17] Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[18] The combined organization would control approximately 4.1 percent of the total amount of deposits of insured depository institutions in Indiana, approximately 0.9 percent of the total amount of deposits of insured depository institutions in Kentucky, and approximately 1.2 percent of the total amount of deposits of insured depository institutions in Ohio, the only states in which First Financial and MainSource have overlapping banking operations. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including First Financial Bank'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 both statutes.

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11 12 U.S.C. § 1831u(a)(1).

12 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

13 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See*12U.S.C.§1841(o)(4)–(7).

14 *See* 12 U.S.C. §§ 1831u(g)(4) and 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

15 12 U.S.C. § 2901 *et seq.*

16 *See* Ind. Code § 28-2-17; Ky. Rev. Stat. Ann. 286.3-900. Illinois has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of that state. *See* 205 Ill. Comp. Stat. 5/21.2. This age requirement is not applicable to the proposed transaction because MainSource Bank is organized under the laws of Indiana.

17 Ky. Rev. Stat. Ann. § 286.3-900(2), -920(4). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

18 Ohio Rev. Code Ann. § 1115.05.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[19] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[20]

First Financial and MainSource have subsidiary depository institutions that compete directly in eight banking markets in Indiana and Ohio.[21] The Board has considered the competitive effects of the proposal in each of these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market ("market deposits") that First Financial would control;[22] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[23] other characteristics of the markets; and, as discussed below, commitments made by First Financial to divest three branches in the Columbus market and one branch in the Greensburg market.

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 five of the eight banking markets in which First Financial Bank and MainSource Bank compete directly.[24] On consummation of the proposal, one of these markets would remain highly concentrated, and the four other markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market and the moderately concentrated banking markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in all five banking markets.

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[19] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[20] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[21] The Columbus banking market ("Columbus market"), Fayette County banking market ("Fayette County market"), and Greensburg banking market ("Greensburg market"), all in Indiana, are defined below. The other five banking markets are defined in Appendix B.

[22] Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, 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).

[23] 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.

[24] The competitive effects of the proposal in these five markets are described in Appendix B.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Columbus, Fayette County, and Greensburg markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Columbus Market

Using initial screening data, First Financial is the largest depository organization in the Columbus market, controlling approximately $652.7 million in deposits, which represent approximately 27.0 percent of market deposits.[25] MainSource is the fourth largest depository organization in the Columbus market, controlling approximately $247.8 million in deposits, which represent approximately 10.2 percent of market deposits. On consummation, First Financial would remain the largest depository organization in the Columbus market, controlling approximately $900.5 million in market deposits, which would represent approximately 37.2 percent of market deposits. The HHI in this market would increase by 552 points, from 1465 to 2017.

To mitigate the potentially adverse competitive effects of the proposal in the Columbus market, First Financial has committed to divest three of MainSource Bank's nine branches in that market, which account for approximately $112.9 million in deposits, to a competitively suitable, in-market purchaser.[26] After the divestiture, First Financial would remain the largest depository organization in the market, controlling approximately $787.6 million in deposits, which would represent approximately 32.5 percent of market deposits.

In addition to the divestiture, the Board also 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 Columbus market.[27] Several factors indicate that the increase in concentration in the Columbus market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of one credit union in the Columbus market that 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 market.[28] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This

[25] The Columbus market is defined as Bartholomew, Jennings, Jackson, and Brown counties, all in Indiana.

[26] As a condition of consummation of the proposal, First Financial has committed that it will execute, before consummating the proposal, an agreement to sell the three branches to one or more purchasers determined by the Board to be competitively suitable. First Financial also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Financial has committed that, if the proposed divestiture is not completed within the 180-day period, First Financial will transfer the unsold branches to an independent trustee, who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

[27] The number and strength of the 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).

[28] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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,*

weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the three MainSource Bank branches to an in-market competitor, and adjusting to reflect competition from the credit union, after consummation First Financial's market share would increase to 29.6 percent, and the market concentration level as measured by the HHI would increase by 231 points, from a level of 1295 to 1526. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the credit union, 14 other depository organizations would continue to serve the Columbus market, including two with market shares greater than 12 percent each.

Fayette County Market

Using initial screening data, First Financial is the second largest depository organization in the Fayette County market, controlling approximately $54.7 million in deposits, which represent approximately 19.7 percent of market deposits.[29] MainSource is the sixth largest depository organization in the Fayette County market, controlling approximately $21.0 million in deposits, which represent approximately 7.6 percent of market deposits. On consummation, First Financial would become the largest depository organization in the Fayette County market, controlling approximately $75.7 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 297 points, from 1704 to 2001.

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 Fayette County market. Several factors indicate that the increase in concentration in the Fayette County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Fayette County market that meet the Board's standard conditions for inclusion in its structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, adjusting to reflect competition from these two credit unions, the market concentration level in the Fayette County market, as measured by the HHI, would increase by 267 points from a level of 1547 to 1814, and First Financial's market share would increase from 19.7 percent to 25.8 percent. After consummation, the Fayette County market would continue to be served by seven other depository organizations, including the two credit unions noted above, including three which would each control more than 16 percent of market deposits.

Greensburg Market

Using initial screening data, First Financial is the fifth largest depository organization in the Greensburg market, controlling approximately $31.9 million in deposits, which represent approximately 5.8 percent of market deposits.[30] MainSource is the largest depository organization in the Greensburg market, controlling approximately $343.0 million in deposits, which represent approximately 62.6 percent of market deposits. On consumma-

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).

[29] The Fayette County market is defined as Fayette County, Indiana.

[30] The Greensburg market is defined as Decatur County, Indiana.

tion, First Financial would become the largest depository organization in the Greensburg market, controlling approximately $374.9 million in market deposits, which would represent approximately 68.5 percent of market deposits. The HHI in this market would increase by 729 points, from 4300 to 5029.

To mitigate the potentially adverse competitive effects of the proposal in the Greensburg market, First Financial has committed to divest one of MainSource Bank's two branches in the Greensburg market to a competitively suitable, out-of-market purchaser. The branch to be divested is slightly smaller than the only branch currently operated by First Financial in the Greensburg market.[31] After this divestiture, First Financial would become the largest depository organization in the market, controlling approximately $345.1 million in deposits, which would represent approximately 63 percent of market deposits. If the branch is sold to an out-of-market competitor, the structure of the Greensburg market would be approximately the same both before and after consummation of the proposal.[32]

In addition to the divestiture, the Board also 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 Greensburg market. Several factors indicate that the increase in concentration as measured by the above HHI, as well as First Financial's resulting market share, overstate the potential competitive effects of the proposal in the Greensburg market.

The Board has considered the competitive influence of one credit union in the Greensburg market that meets the Board's standard conditions for inclusion in the structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, taking into account the divestiture of the MainSource Bank branch to an out-of-market competitor, and adjusting to reflect competition from the credit union, the market concentration level in the Greensburg market as measured by the HHI would increase by 40 points, from a level of 3967 to 4007, and First Financial's share of market deposits resulting from the transaction would be 60.4 percent. Including the credit union and a new competitor entering the market through the divestiture, after consummation the Greensburg market would be served by five other depository organizations, including two with market shares greater than 10 percent each. The presence of these market competitors suggests that First Financial would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on First Financial in the Greensburg market.

Notwithstanding these circumstances, the Board views the competitive effects in this market as presenting a close case.

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, with the proposed divestitures of branches in the Columbus and Greensburg markets, would not likely have a significantly adverse effect on competition in the Columbus, Fayette County, and Greensburg markets or in any other relevant banking market. In addition, the appropriate banking

[31] First Financial Bank's only branch in the Greensburg market has $31.9 million in deposits, representing 5.6 percent of total market deposits. MainSource Bank has two branches with deposits in Greensburg, with $312.8 million and $29.8 million, respectively. First Financial proposes to divest the smaller of these branches, representing 5.2 percent of market deposits.

[32] The Board has previously approved two applications in which the post-divestiture HHI and the percentage of market deposits exceeded the post-divestiture effects in this case. *See Umpqua Holdings Corp.*, 100 *Federal Reserve Bulletin* 42 (2014); *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including First Financial's commitment to divest a total of four branches in the Columbus and Greensburg markets, 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 of the eight banking markets in which First Financial Bank and MainSource Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Consideration

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[33] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Financial and MainSource are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[34] The asset quality, earnings, and liquidity of both First Financial Bank and MainSource Bank are consistent with approval, and First Financial appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of First Financial, MainSource, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Financial; 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.

[33] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[34] As part of the proposed transaction, each share of MainSource common stock would be converted into the right to receive 1.3875 shares of First Financial common stock.

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

The Board also has considered First Financial's plans for implementing the proposal. First Financial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First Financial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Financial's management has the experience and resources to operate the combined organization in a safe and sound manner, and First Financial plans to integrate MainSource's existing management and personnel in a manner that augments First Financial's and First Financial Bank's management.[35]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[36] 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.[37] 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 the institutions' safe and sound operation,[38] 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.[39]

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

[35] Following consummation of the proposed transaction, six MainSource directors will join First Financial's board of directors.

[36] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[37] 12 U.S.C. § 2901 *et seq*.

[38] 12 U.S.C. § 2901(b).

[39] 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of First Financial Bank and MainSource Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Cleveland ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by First Financial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[40] In this case, the Board considered the supervisory views of the Reserve Bank and the Office of the Comptroller of the Currency ("OCC") with respect to First Financial Bank and the Federal Deposit Insurance Corporation ("FDIC") with respect to MainSource Bank.[41]

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.[42] 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 ("HMDA"),[43] 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 ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[44] (4) the institution's community development lending, including the

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

41 Until its conversion on December 30, 2016, to a state member bank supervised by the Board, First Financial Bank was a national bank supervised by the OCC.

42 12 U.S.C. § 2906.

43 12 U.S.C. § 2801 *et seq*.

44 Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1million 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).

number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[45]

CRA Performance of First Financial Bank

First Financial Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of November 4, 2013 ("First Financial Bank Evaluation").[46] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[47]

Examiners found that First Financial Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity was good. Examiners also noted that the bank's geographic distribution of home mortgage loans and small loans to businesses was good. In addition, examiners found the bank's distribution of home mortgage loans by income level of the borrower to be good and the bank's distribution of loans to businesses with different revenue sizes to be adequate.

Examiners determined that First Financial Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that, in the state of Indiana, the bank's branches were reasonably accessible. Overall, examiners found that the community development services provided by the bank were adequate and that the bank provided a good level of services in Ohio.

CRA Performance of MainSource Bank

MainSource Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 29, 2014 ("MainSource Bank Evaluation").[48] The bank received "Low Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.[49]

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45 *See* 12 CFR 228.21 *et seq*.

46 The First Financial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2010, through December 31,2011. The evaluation period for community development loans, investments, and services was from June 1,2010, through December 31, 2011.

47 The First Financial Bank Evaluation included full-scope evaluations of the Cincinnati-Middleton Ohio-Kentucky-Indiana Multistate Metropolitan Statistical Area ("MSA"); Columbus, Indiana MSA; and the Ohio Non-MSA AA. Limited scope evaluations were performed of the Bloomington, Indiana MSA; Indianapolis, Indiana MSA; Gary, Indiana MSA; Lafayette, Indiana MSA; Indiana Non-MSA AA; Lima, Ohio MSA; and the Dayton, Ohio MSA.

48 The MainSource Bank Evaluation was conducted using Large Bank CRA Evaluation Procedures. Examiners reviewed HMDA, small business, and small farm loans originated from January 1, 2012, through December 31, 2013. The evaluation period for community development loans, investments, and services was from October 20, 2011, through September 29, 2014.

49 The MainSource Bank Evaluation included full-scope evaluations of the Louisville-Jefferson County, Kentucky-Indiana Multistate MSA; Cincinnati-Middletown, Ohio-Indiana-Kentucky Multistate MSA; State of Indiana Non-MSA AA; Kankakee-Bradley, Illinois MSA; Dayton, Ohio MSA; and the Kentucky Non-MSA AA. Limited-scope evaluations were performed of the Anderson, Indiana MSA; Bloomington, Indiana MSA; Columbus, Indiana MSA; Gary Metropolitan Division, Indiana AA; Indianapolis-Carmel, Indiana MSA; Danville, Illinois MSA; and the State of Illinois Non-MSA AA.

Examiners found that MainSource Bank's lending levels reflected good responsiveness to credit needs within its AAs and that a substantial majority of the bank's loans were made within its AAs. Examiners further found that the geographic distribution of MainSource Bank's loans reflected adequate penetration throughout its AAs. Examiners noted that the bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that MainSource Bank made a relatively high level of community development loans and originated qualifying community development loans in all of the bank's AAs. Further, the bank was found to use innovative and/or flexible lending practices in order to serve AA credit needs.

Examiners found that MainSource Bank made an adequate level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, although rarely in a leadership position. Examiners further noted that the bank exhibited adequate responsiveness to credit and community economic development needs, but that the bank rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that MainSource Bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that branch services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding its views of First Financial Bank's consumer compliance risk-management systems. The Board considered the most recent consumer compliance examination and fair lending review of First Financial Bank by the OCC. The Board also considered the most recent consumer compliance examination of MainSource Bank conducted by the FDIC.

The Board has taken this information, as well as the CRA performance records of First Financial Bank and MainSource Bank into account in evaluating the proposed transaction, including in considering whether First Financial has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm's AAs.

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. First Financial represents that it would provide a full range of deposit, savings, and other financial products and services to consumers and small- and medium-sized businesses in Ohio, Indiana, and Kentucky. First Financial states that it would continue offering all of the significant products and services currently offered by First Financial Bank and MainSource Bank after consummation of the proposal. Further, First Financial represents that, following the proposed transaction, the combined organization would be able to increase its lending limits and better meet the credit and banking needs of the small- and medium-sized businesses in its expanded service area.

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 Financial, and the 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 and the Bank Merger Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system."[50]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[51] 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.[52]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[53]

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

[50] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[51] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

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

activities.[54] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

First Financial Bank has applied under section 9 of the FRA to establish and operate branches at the current main office and branches of MainSource Bank.[55] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Financial 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.[56] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Election

As noted, First Financial has elected to become a financial holding company in connection with the proposal. First Financial has certified that, upon consummation of the proposal, First Financial and First Financial Bank would be well capitalized and well managed, and First Financial has provided all of the information required under the Board's Regulation Y.[57] Based on all the facts of record, the Board determines that First Financial's election will become effective upon consummation of the proposal if, on that date, First Financial is well capitalized and well managed and all depository institutions it controls are well capitalized and well managed and have CRA ratings of at least "Satisfactory."

Conclusion

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

[54] First Financial Bank and MainSource Bank offer a broad range of retail and commercial banking products and services. First Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[55] *See* 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, First Financial Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4; Ind. Code § 28-2-13-19; Ky. Rev. Stat. Ann. 286.3-920; Ohio Rev. Code Ann. §1117.01.

[56] 12 U.S.C.§ 322; 12 CFR 208.6. Upon consummation of the proposal, First Financial Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

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

the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Financial 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. 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors,\ effective February 22, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to be Established by First Financial Bank

Illinois Branches
1. 101 North Hilgert Drive, Grant Park, Illinois 60940
2. 323 East Main Street, Hoopeston, Illinois 60942
3. 2000 West Court Street, Kankakee, Illinois 60901
4. 216 South Fourth Street, Watseka, Illinois 60970

Indiana Branches
1. 202 North Harrison Street, Alexandria, Indiana 46001
2. 1802 Allison Lane, Jeffersonville, Indiana 47130
3. 104 East Link's Way, Aurora, Indiana 47001
4. 136 East Harriman, Bargersville, Indiana 46106
5. 1053 State Road 229 North, Batesville, Indiana 47006
6. 3205 East Third Street, Bloomington, Indiana 47401
7. 24004 Stateline Road, Lawrenceburg, Indiana 47025
8. 9014 State Road 101, Brookville, Indiana 47012
9. 1051 West Spring Street, Brownstown, Indiana 47220
10. 221 East Main Street, Crawfordsville, Indiana 47933
11. 8740 South Emerson Avenue, Indianapolis, Indiana 46237
12. 597 Banta Street, Franklin, Indiana 46131
13. 6671 Highway 150, Floyds Knobs, Indiana 47119
14. 7700 State Road 64, Georgetown, Indiana 47122
15. 3610 Grant Line Road, New Albany, Indiana 47150
16. 122 West Washington Street, Greensburg, Indiana 47240
17. 102 West Main Street, Hagerstown, Indiana 47346
18. 136 Thornton Road, Hanover, Indiana 47243
19. 555 East Third Street, Hobart, Indiana 46342
20. 8475 North State Road 9, Hope, Indiana 47246
21. 3535 East 96th Street, Indianapolis, Indiana 46240
22. 120 East Main Street, Knightstown, Indiana 46148
23. 2253 State Road 54 East, Linton, Indiana 47441
24. 201 South Main Street, Lynn, Indiana 47355

25. 1315 Clifty Drive, Madison, Indiana 47250
26. 417 Jefferson Street, Madison, Indiana 47250
27. 201 North Broadway, Greensburg, Indiana 47240
28. 11 South Meridian, Ste 101, Indianapolis, Indiana 46204
29. 100 East Spring Street, New Albany, Indiana 47150
30. 600 South Memorial Drive, New Castle, Indiana 47362
31. 501 Clifty Drive, Madison, Indiana 47250
32. 521 North State Street, North Vernon, Indiana 47265
33. 112 North Meridian Street, Portland, Indiana 47371
34. 3433 East Main Street, Richmond, Indiana 47374
35. 230 Main Street, Rising Sun, Indiana 47040
36. 202 North Main Street, Rushville, Indiana 46173
37. 1130 East Tipton Street, Seymour, Indiana 47274
38. 28287 State Route 1, West Harrison, Indiana 47060
39. 3880 West Presidential Way, Edinburgh, Indiana 46124
40. 1012 South Adams Street, Versailles, Indiana 47042
41. 102 West Main Street, Vevay, Indiana 47043
42. 1263 North Indiana 135, Greenwood, Indiana 46142
43. 120 North Monroe Street, Williamsport, Indiana 47993

Kentucky Branches
1. 1905 Blankenbaker Parkway, Louisville, Kentucky 40299
2. 9819 Brownsboro Road, Louisville, Kentucky 40241
3. 6512 Bardstown Road, Louisville, Kentucky 40291
4. 2862 Frankfort Avenue, Louisville, Kentucky 40206
5. 201 Limestone Drive, Frankfort, Kentucky 40601
6. 104 South Chiles Street, Harrodsburg, Kentucky 40330
7. 1012 Bypass North, Lawrenceburg, Kentucky 40342
8. 293 North Hubbards Lane, Louisville, Kentucky 40207
9. 293 North Hubbards Lane, Louisville, Kentucky 40207
10. 13704 Shelbyville Road, Louisville, Kentucky 40245
11. 1734 Midland Trail, Shelbyville, Kentucky 40065
12. 2735 Bardstown Road, Louisville, Kentucky 40205
13. 9306 Taylorsville Road, Louisville, Kentucky 40299
14. 211 West Oak Street, Louisville, Kentucky 40203
15. 295 North Hubbards Lane, Louisville, Kentucky 40207

Ohio Branches
1. 7637 Beechmont Avenue, Cincinnati, Ohio 45255
2. 3723 Glenmore Avenue, Cincinnati, Ohio 45211
3. Summit Woods 1, 100 East Business Way, Suite 150, Cincinnati, Ohio 45241
4. 585 Anderson Ferry Road, Cincinnati, Ohio 45238
5. 6300 Harrison Avenue, Cincinnati, Ohio 45247
6. 10425 Harrison Avenue, Harrison, Ohio 45030
7. 3442 Edwards Road, Cincinnati, Ohio 45208
8. 5550 Cheviot Road, Cincinnati, Ohio 45239
9. 2000 Madison Road, Cincinnati, Ohio 45208
10. 7615 Reading Road, Cincinnati, Ohio 45237
11. 11186 Reading Road, Cincinnati, Ohio 45241
12. 635 South Market Street, Troy, Ohio 45373
13. 1580 West Main Street, Troy, Ohio 45373
14. 101 East Elm Street, Union City, Ohio 45390
15. 5791 Glenway Avenue, Cincinnati, Ohio 45238

Appendix B

First Financial/MainSource 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
Bloomington, Indiana – includes Greene, Monroe, and Lawrence counties.						
First Financial Pre-Consummation	3	$317.3M	10.04			
MainSource	9	$137.0M	4.33			
First Financial Post-Consummation	3	$454.3M	14.37	1499	87	15
Gary/Hammond, Indiana – includes Lake, Porter, La Porte, Newton, Jasper counties; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County.						
First Financial Pre-Consummation	9	$702.5M	4.81			
MainSource	16	$134.2M	0.92			
First Financial Post-Consummation	8	$836.7M	5.73	1003	8	29
Indianapolis, Indiana – includes Boone, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Morgan, Owen, Putnam, Rush, Shelby, and Tipton counties.						
First Financial Pre-Consummation	14	$620.0M	1.32			
MainSource	18	$452.7M	0.91			
First Financial Post-Consummation	12	$1.05B	2.23	1125	2	48
Cincinnati, Ohio – includes Brown, Butler, Clermont, Hamilton, and Warren counties, Ohio; Dearborn County, Indiana; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky; and the New Liberty and Owenton census county divisions in Owen County, Kentucky.						
First Financial Pre-Consummation	6	$2.24B	2.03			
MainSource	11	$568.5M	0.52			
First Financial Post-Consummation	4	$2.80B	2.54	3426	2	63
Dayton, Ohio – includes Montgomery, Miami, Greene, and Preble counties.						
First Financial Pre-Consummation	7	$370.3M	3.13			
MainSource	11	$144.3M	1.22			
First Financial Post-Consummation	7	$514.7M	4.35	1534	8	28

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Order Issued Under Section 4 of the Bank Holding Company Act

Associated Banc-Corp
Green Bay, Wisconsin

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Savings Association
FRB Order No. 2018-03 (January 23, 2018)

Associated Banc-Corp ("Associated"), Green Bay, Wisconsin, 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 sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board's Regulation Y[2] to acquire Bank Mutual Corporation ("Bank Mutual Corp"), Milwaukee, Wisconsin, a savings and loan holding company, and thereby indirectly acquire its subsidiary, Bank Mutual, Brown Deer, Wisconsin, a federal savings association. Following the proposed acquisition, Bank Mutual would be merged into Associated's subsidiary bank, Associated Bank, N.A. ("Associated Bank"), Green Bay, Wisconsin.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 43237 (September 14, 2017)).[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 4 of the BHC Act.

Associated, with consolidated assets of approximately $30.1 billion, is the 62nd largest insured depository organization in the United States. Associated controls approximately $22.3 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] Associated controls Associated Bank, which operates in Wisconsin, Illinois, and Minnesota. Associated is the 3rd largest insured depository organization in Wisconsin, controlling deposits of approximately $15.0 billion, which represent 9.7 percent of the total deposits of insured depository institutions in that state.[6] Associated is the 8th largest insured depository organization in Minnesota, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Bank Mutual Corp, with consolidated assets of approximately $2.7 billion, is the 321st largest insured depository organization in the United States. Bank Mutual Corp controls approximately $2.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bank Mutual Corp controls Bank Mutual, which operates in Wisconsin and Minnesota. Bank Mutual Corp is the 9th largest insured depository organization in Wisconsin, controlling deposits of approximately $1.9 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state. Bank Mutual Corp is the 305th largest insured depository organization in Minnesota, controlling deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1843(c)(8) and (j); 12 CFR 225.24.

3 The merger of Bank Mutual into Associated 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 depository institution merger on January 4, 2018.

4 12 CFR 262.3(b).

5 National asset data, market share, and ranking data are as of September 30, 2017, unless otherwise noted.

6 State deposit data are as of June 30, 2017. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

$22.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Associated would become the 59th largest insured depository organization in the United States, with consolidated assets of approximately $32.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Associated would control consolidated deposits of approximately $24.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Wisconsin, Associated would remain the 3rd largest insured depository organization, controlling deposits of approximately $17.0 billion, which represent approximately 11 percent of the total deposits of insured depository institutions in that state. In Minnesota, Associated would remain the 8th largest insured depository organization, controlling deposits of approximately $1.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[7] The Board requires that a savings association acquired by a bank holding company conform its direct and indirect activities to those permissible for a bank holding company under section 4 of the BHC Act. Associated has committed that all the activities of Bank Mutual Corp and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Bank Mutual Corp "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[8] As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.[9] In acting on a notice to acquire a savings association, the Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10]

Competitive Considerations

As part of the Board's consideration of the factors under section 4(j)(2) of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of the

[7] 12 CFR 225.28(b)(4)(ii).

[8] 12 U.S.C. § 1843(j)(2)(A).

[9] *See* 12 CFR 225.26. *Seee.g.*, *M&T Bank Corporation*, FRB Order 2015-27 (September 30, 2015); *Southside Bancshares, Inc.*, FRB Order 2014-21 (December 10, 2014); *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); and *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

[10] 12 U.S.C. § 2901 *etseq*; 12 CFR 225.13(b)(3). The proposal does not raise interstate issues under section 4(i)(8) of the BHC Act because Wisconsin is the home state of both Associated and Bank Mutual. *See* 12 U.S.C. §§ 1841(o)(4), 1843(i)(8).

record.[11] Associated and Bank Mutual Corp have subsidiary depository institutions that compete directly in 16 banking markets located in Wisconsin and Minnesota.[12] 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 each market; the relative share of total deposits in insured depository institutions in the markets ("market deposits") that Associated would control;[13] the concentration levels of market deposits and the increases 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");[14] and other characteristics of the markets.

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 the Appleton, Beloit-Janesville, Chicago, Eau Claire, Fond du Lac, Madison, Milwaukee, Marinette, Minneapolis/Saint Paul, Red Wing, Rice Lake, Saint Croix Falls, Sheboygan, and Sturgeon Bay markets.[15] On consummation of the proposal, the changes in the HHI in the Chicago, Eau Claire, and Madison markets would be small (22 points or less), and the markets would remain unconcentrated. On consummation of the proposal, the changes in the HHI in the Appleton, Beloit-Janesville, Fond du Lac, Red Wing, Rice Lake, Saint Croix Falls, and Sheboygan markets would be below the threshold in the DOJ Bank Merger Guidelines; each of the markets would remain moderately concentrated, and numerous competitors would remain in each market. The Sturgeon Bay market would remain highly concentrated, but the increase in the HHI would be below the threshold in the DOJ Bank Merger Guidelines.[16] Furthermore, five competitors would remain in the Sturgeon Bay market, including a market

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[11] 12 U.S.C. § 1843(j)(2).

[12] All of these banking markets are defined in the Appendix, except for the Shawano, Wisconsin banking market ("Shawano market") and the Green Bay, Wisconsin banking market ("Green Bay market"), which are defined in the discussion below.

[13] Local deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991). For purposes of competitive analysis, after a savings association is acquired by a bank holding company, the Board weights the deposits controlled by the savings association at 100 percent, similar to a commercial bank. *See*, *e.g.*, *Sterling Bancorp*, FRB Order 2017-21 (August 30, 2017).

[14] 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.

[15] The competitive effects of the proposal in these markets are described in the Appendix.

[16] When analyzing banking markets that warrant special scrutiny, the Board has regularly weighted at 100percent the deposits of thrifts that serve as a significant source of commercial loans and provide a broad range of consumer, mortgage, and other banking products. *See*, *e.g.*, *First Horizon Nat'l Corp.*, FRB Order No. 2017-29 (October 30, 2017). Bank Mutual has a commercial and industrial loan portfolio similar to those of commercial banks in general. Weighting the deposits of Bank Mutual at 100 percent in the Sturgeon Bay market would result in an increase in the HHI of 221 points to 4796. However, the Sturgeon Bay market includes one credit union that 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 market. Taking into account the competitive influence of this credit union, the HHI would increase by 194 points to 4249, which is within the thresholds in the DOJ Bank Merger Guidelines.

leader with a market share over 60 percent. The Marinette, Minneapolis/Saint Paul, and Milwaukee markets would also remain highly concentrated; however, the changes in the HHI in these markets would be small (22 points or less), and numerous competitors would remain in each market.

Banking Markets Warranting Special Scrutiny

The structural effects of the proposal in the Shawano market and the Green Bay market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.[17]

Green Bay, Wisconsin Banking Market.

Using initial screening data, Associated is the largest depository organization in the Green Bay market, controlling approximately $2.5 billion in deposits, which represent approximately 33.5 percent of market deposits. Bank Mutual Corp is the 12th largest depository organization in the Green Bay market and is treated as controlling approximately $142.9 million in deposits (i.e., actual deposits weighted at 50 percent), which represent approximately 1.9 percent of market deposits. On consummation, Associated would remain the largest depository organization in the Green Bay market, controlling approximately $2.8 billion in market deposits, which would represent approximately 36.6 percent of market deposits. The HHI in this market would increase by 194 points to 1846.

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 Green Bay market.[18] Factors indicate that the increase in concentration in the Green Bay market, as measured by the above market share, overstates the potential competitive effects of the proposal in the market. In particular, five credit unions exert a competitive influence in the Green Bay market. These 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 market.[19] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in its calculations to estimate market influence. This weighting takes into account the limited commercial lending done by credit unions relative to commercial banks' lending levels.

After consummation, adjusting to reflect competition from credit unions in the market, the market concentration level in the Green Bay market as measured by the HHI would increase by 169, from a level of 1435 to 1604, and the market share of Associated resulting from the transaction would increase from 31 percent to 33.9 percent. Twenty-six other competitors would remain in the market (including the five credit unions), including one

[17] The Shawano market is defined as Menominee County, Wisconsin, plus Shawano County, Wisconsin (except Angelica, Maple Grove, Aniwa, Birnamwood, Wittenberg, and Germania townships).

[18] The number and strength of the 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).

[19] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, e.g., *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *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).

competitor with over 14 percent of market deposits and one competitor with over 11 percent of market deposits. The presence of these viable competitors suggests that Associated would have limited ability to unilaterally offer less attractive terms to consumers and these competitors would be able to exert competitive pressure on Associated in the Green Bay market.

Shawano, Wisconsin Banking Market

Using initial screening data, Associated is the largest depository organization in the Shawano market, controlling approximately $123.7 million in deposits, which represent approximately 30.7 percent of market deposits. Bank Mutual Corp is the ninth largest depository organization in the Shawano market and is treated as controlling approximately $13.7 million in deposits (i.e., actual deposits weighted at 50 percent), which represent approximately 3.4 percent of market deposits. On consummation, Associated would remain the largest depository organization in the Shawano market, controlling approximately $151.2 million in market deposits, which would represent approximately 36.2 percent of market deposits. The HHI in this market would increase by 305 points to 2124.

Factors indicate that the increase in concentration in the Shawano market, as measured by the above market share, overstates the potential competitive effects of the proposal in the market. In particular, two credit unions exert a competitive influence in the Shawano market. Both 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 market. Taking into account the limited lending done by credit unions relative to commercial banks, the Board finds that these circumstances warrant including the deposits of these credit unions at a 50-percent weight in its calculations to estimate market influence. Taking into account this adjustment, the market concentration level in the Shawano market as measured by the HHI would increase by 188, from a level of 1437 to 1625, and the market share of Associated resulting from the transaction would increase from 24 percent to 28.5 percent. Nine other depository institutions would remain in the market (including the two credit unions), including two competitors that each would have over 17 percent of market deposits. The presence of these viable competitors suggests that Associated would have limited ability to unilaterally offer less attractive terms to consumers and these competitors would be able to exert competitive pressure on Associated in the Shawano market.

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 Green Bay and Shawano markets. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Green Bay market, the Shawano market, or in any other relevant banking market.[20] Accordingly, the Board determines that competitive considerations are consistent with approval.

[20] The Board received public comments that expressed general concerns about the competitive aspects of the proposal and the growth in the size of banks in the United States. The Board considered these comments as part of its review of the potential competitive effects of the proposal.

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under section 4(j)(2) of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[21] In its evaluation of 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 public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and 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.

Associated and Associated Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a holding company merger, with a subsequent merger of the subsidiary depository institutions.[22] The asset quality, earnings, and liquidity of Associated Bank and Bank Mutual are consistent with approval, and Associated appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are 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 Associated, Bank Mutual Corp, and their subsidiary depository institutions, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by Associated, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by the commenters.

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

The Board also has considered Associated's plans for implementing the proposal. Associated 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. Associated would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Associated's management has the experience and resources to operate the

[21] 12 CFR 225.26(b).

[22] To effect the transaction, each share of Bank Mutual Corp common stock and outstanding options to acquire Bank Mutual Corp common stock would be converted into the right to receive Associated common stock, based on an exchange ratio.

combined organization in a safe and sound manner, and Associated plans to integrate the existing management and personnel of Bank Mutual Corp in a manner that augments Associated's management.[23]

Based on all the facts of record, including Associated's supervisory record, managerial and operational resources, and plans for operating the combined organization 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 Associated and Bank Mutual Corp in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

As part of weighing the possible adverse effects of a transaction against its public benefits as required by section 4(j)(2) of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[24] In its evaluation 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 these communities, 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 the institutions' safe and sound operation,[25] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[26]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide loan 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 Associated Bank and Bank Mutual, the fair lending and compliance records of each bank, the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by Associated, and the public comments received on the proposal.

[23] Following consummation of the proposed transaction, the current chairman of the boards of directors of Bank Mutual Corp and Bank Mutual will be nominated to join the boards of directors of Associated and Associated Bank.

[24] 12 U.S.C. § 1843(j)(2).

[25] 12 U.S.C. § 2901(b).

[26] 12 U.S.C. § 2903.

Public Comments on the Proposal

The Board received comments from four organizations, together representing approximately 400 public commenters, who objected to the proposal based on alleged weaknesses in the CRA and fair lending records of Associated Bank. Commenters expressed general concern that the proposed transaction could affect the communities that Associated and Bank Mutual Corp serve, particularly in Wisconsin, where Associated Bank and Bank Mutual are headquartered and have a significant banking presence. Some commenters alleged that Associated Bank had low levels of lending to African American and Hispanic borrowers, majority-minority areas, and LMI individuals and census tracts, as reflected in data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[27] Some commenters also criticized Associated Bank's small business lending activity and the amount of its community development loans and investments in LMI communities. The majority of these commenters based their allegations on Associated Bank's CRA performance during the 2013 through 2015 review period; one commenter criticized Associated Bank's mortgage lending to African Americans based on 2016 HMDA data.[28]

Some commenters noted recent improvement in certain CRA-related activities of Associated Bank and Bank Mutual, such as the depository institutions offering flexible loan products, supporting community organizations, and making investments in affordable housing. However, each of those commenters criticized other aspects of Associated Bank's CRA and fair lending record.[29] For example, commenters criticized Associated Bank's Community Commitment Plan for the 2016 through 2018 period. In particular, commenters argued that the mortgage, small business, and community development lending benchmarks in the plan are lower than the bank's actual CRA performance during the 2013 through 2015 evaluation period. These and other commenters requested that the Board condition its approval of the proposal on Associated Bank entering into an updated CRA plan that includes formal input from community organizations and CRA-related benchmarks designed to meet the needs of LMI individuals and communities, minority individuals, and majority-minority areas.[30] In addition, some commenters requested that as part of its review of the proposal, the Board not take into consideration CRA-related actions by Associated Bank that relate to the agreement that the bank entered into with the United States Department of Housing and Urban Development ("HUD") in 2015.[31]

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[27] 12 U.S.C. § 2801 *et seq*.

[28] Specific geographic areas of concern for commenters included parts or all of Associated Bank's assessment areas ("AAs") in the Chicago-Naperville-Arlington Heights Metropolitan Division ("MD") ("Chicago AA"); Cook County, Illinois; the Milwaukee, Wisconsin Metropolitan Statistical Area ("MSA"); the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Multistate MSA ("MMSA"); Hennepin County, Minnesota; Ramsey County, Minnesota; Racine County, Wisconsin; Kenosha County, Wisconsin; and Lake County, Illinois.

[29] The commenters also made suggestions regarding specific products and services that Associated Bank should offer and recommended other changes to Associated Bank's current product and service offerings. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them. *See*, *e.g.*, *First Horizon National Corporation* FRB Order No. 2017-29 at 18 fn. 39 (October 30, 2017); *PacWest Bancorp*, FRB Order No. 2015-26 at 10 fn. 24 (2015).

[30] The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. *See*, *e.g.*, *Sterling Bancorp*, FRB Order No. 2017-21 at 10 fn. 24 (August 30, 2017); *Huntington Bancshares, Inc.*, FRB Order No. 2016-13 at 32 fn. 50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 fn. 54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002). In its evaluation of a proposal, 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.

[31] Commenters noted that, in May 2015, Associated Bank entered into a conciliation agreement ("Agreement") with HUD to resolve a complaint by HUD alleging that Associated Bank discriminated on the basis of race and national origin by disproportionately denying the loan applications of African American and Hispanic applicants during the period of 2008 through 2010. The complaint also alleged that Associated Bank under-

In addition, some commenters expressed concern that Associated Bank's plans to close or consolidate branches in connection with the proposed transaction may adversely affect communities where the branches are located. Furthermore, some commenters expressed concern regarding the percentage of branches that Associated Bank has in LMI or majority-minority census tracts in the bank's Chicago AA and Racine County, Wisconsin AA.

Businesses of the Involved Institutions and Response to the Comments

Associated provides a diverse range of financial services, primarily through its principal subsidiary, Associated Bank, which operates through a branch network in Wisconsin, Illinois, and Minnesota. Products and services offered by Associated include consumer and commercial banking services, mortgage banking services, commercial real estate lending, credit card lending, community development investments, fiduciary trust services, and asset management services.

Bank Mutual Corp is the holding company of Bank Mutual, which is a federal savings association that operates through a branch network in Wisconsin and Minnesota. Bank Mutual provides community banking products and services such as residential mortgages; commercial real estate loans; construction and development commercial and industrial and consumer loans; and investment, wealth management, and insurance products and services.

In response to the comments, Associated asserts that approval of the proposal is justified based on Associated Bank's most recent CRA performance evaluation. Associated notes that it offers a variety of mortgage loan programs designed to increase affordable housing opportunities for LMI individuals and communities. For example, Associated represents that Associated Bank offers proprietary mortgage loan products, which are designed to assist LMI borrowers and first-time homebuyers through features such as higher loan-to-value ratios, down payment assistance, and affordable secondary financing. In addition, Associated represents that the bank participates in a variety of federal, state, and local mortgage assistance programs and has recently established community advisory councils in Chicago, Milwaukee, and Minneapolis that provide the bank with an additional platform to help identify and address community development needs in its AAs.

Associated notes that Associated Bank publicized a three-year Community Commitment Plan in 2016, which is specifically designed to expand the bank's CRA-related lending to LMI and minority individuals in Wisconsin, Illinois, and Minnesota. Associated asserts that Associated Bank has substantially exceeded or met each of its goals under the plan for 2016 and expects to meet or exceed all goals outlined for 2017 and 2018.

Associated denies the commenters' allegations that Associated Bank has fair lending shortcomings. Associated represents that it is firmly committed to making its credit products and services available to customers on a fair and equitable basis and in strict compliance with fair lending laws and regulations. Associated represents that Associated Bank maintains a fair lending program with policies and procedures that help ensure compliance with applicable CRA and fair lending requirements. Associated represents that this program includes testing and monitoring of the bank's loans for HMDA accuracy and completeness; periodic analysis of marketing, redlining, and steering risks; and periodic reviews by

served neighborhoods with significant African American or Hispanic populations. Associated denies that Associated Bank engaged in the prohibited discrimination alleged in the HUD complaint. Associated represents that the bank agreed to enter into the Agreement and implement new initiatives that would increase its lending to minority borrowers and communities. Associated asserts that Associated Bank has met or exceeded the Agreement's annual requirements in a timely manner and is ahead of schedule in achieving various overall requirements under the Agreement.

the bank's fair lending team to determine whether there are program, operational, or compliance gaps in its fair lending program. In addition, Associated represents that the bank conducts periodic fair lending compliance risk assessments and escalates potential issues to its senior management and directors.

Associated asserts that Associated Bank's CRA performance, as measured through HMDA data from 2016 through mid-year 2017, has improved since the bank's last CRA performance evaluation, which analyzed HMDA data from 2013 through 2015. For example, Associated asserts that Associated Bank has increased the percentage of its total HMDA loans and home purchase loans that it originated in LMI census tracts across each of the geographies discussed by the commenters. Similarly, Associated asserts that, from 2016 through mid-2017, Associated Bank increased the percentage of total HMDA loans that it originated in majority-minority census tracts and to African American and Hispanic borrowers.

Associated asserts that Associated Bank has taken steps to increase its lending to LMI and minority borrowers, including through advertising and outreach programs, community development investments, and the bank's multicultural-affordable-lending team. Associated also notes that Associated Bank has taken steps to improve its small business lending, particularly to businesses with revenues of $1 million or less, businesses in LMI census tracts, and minority- and women-owned businesses. These initiatives include enhancing the bank's credit underwriting process, modifying the bank's Small Business Administration loan policies, investing in technology, and pursuing formalized partnerships with community development financial institutions.

Associated disputes the assertion by some commenters that Associated Bank's community development lending and investment activity does not compare favorably to certain institutions with a similar profile. Specifically, Associated argues that the data referenced by the commenters are inaccurate and that, when Associated Bank's entire portfolio of community development loans and investments is accounted for, the bank's performance is comparable to the referenced institutions.

Associated represents that Associated Bank considered a variety of factors in identifying branches for closure, including the proximity of other branch locations, the respective conditions and available services at the consolidating or closing branches and the recipient branches, the effect of branch closures on customers and the relevant communities, and the financial performance and future prospects of the consolidating or closing branches. Associated represents that the proposed branch closures would be completed in accordance with the applicable regulatory requirements associated with closing branches.[32] With respect to Associated Bank's branching strategy, Associated represents that the bank has recently taken steps to increase its presence in LMI geographies. For example, Associated notes that since 2014, Associated Bank has opened a branch in a majority-minority census tract of Racine, Wisconsin, and two branches and two loan production offices in LMI and majority-minority communities in Chicago, Illinois.

[32] The Board notes that section 42 of the Federal Deposit Insurance Act (12U.S.C.§1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg.* 34844 (June 29, 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.

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, public comments received on the proposal, and the response to comments by the applicant.[33] In this case, the Board considered the supervisory views of the OCC and the CFPB.

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.[34] 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 AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[35] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when commenters assert that HMDA data reflect disparities in the rates of loan applications, originations, or 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.[36] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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

[34] 12 U.S.C. § 2906.

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

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

CRA Performance of Associated Bank

Associated Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of July 27, 2015 ("Associated Bank Evaluation").[37] The bank received "Low Satisfactory" ratings for the Lending Test and the Service Test and a "High Satisfactory" rating for the Investment Test.[38] Examiners noted that the bank's performance in Wisconsin received the greatest emphasis because it represented the bank's most significant market.

Examiners found that Associated Bank's overall lending activity was good. In Wisconsin, examiners found that the bank's level of lending was excellent, particularly for home mortgage loans. Examiners found that the distribution of the bank's loans among borrowers of different income levels was good, and the distribution of the bank's loans among different geographies was adequate. Examiners determined that the bank made an adequate level of community development loans in Wisconsin. In the Milwaukee MSA, an area of particular concern to commenters, examiners found that Associated Bank's overall lending activity was excellent. In Illinois, examiners found that the bank had an adequate level of lending for home mortgage loans and for small business loans. Examiners found that the distribution of the bank's loans among borrowers of different income levels was good, and the distribution of the bank's loans among different geographies was adequate. In Minnesota, examiners found that the bank had a good level of lending for home mortgage loans and small business loans and that the distribution of the bank's loans among borrowers of different income levels was good. Examiners also found that the bank's distribution of loans among different geographies was adequate in Minnesota.

Examiners found that Associated Bank had an overall good amount of investments in its AAs. Examiners noted that the bank's investments supported, among other things, affordable housing needs in its AAs, community development services, and economic development. In Wisconsin and Minnesota, examiners found that the bank had an adequate level of qualified investments that were responsive to community needs. In the Milwaukee MSA, examiners found that Associated Bank demonstrated adequate responsiveness to the community development needs of the community and made occasional use of innovative and complex instruments. In Illinois, examiners found that the bank's performance under the Investment Test was "Outstanding" based on an excellent level of investments in the Rockford, Illinois MSA and an adequate level of investments in the St. Louis, Illinois MSA.

Examiners found that Associated Bank's branches were reasonably accessible to essentially all portions of the bank's AAs. In addition, examiners determined that the bank had an adequate distribution of retail services in the majority of its AAs and that the bank's level of community development services in its AAs was good. In Wisconsin, examiners found that the bank's branches were accessible to essentially all LMI individuals and geographies. In addition, examiners noted that the bank had a good level of community development services that were found to be responsive to community needs. Examiners noted that Asso-

[37] The Associated Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for HMDA and small business loans was January 1, 2011, through December 31, 2013. The evaluation period for community development loans and services was January 1, 2011, through July 27, 2015. The evaluation period for investments was July 1, 2011, through July 27, 2015.

[38] The Associated Bank Evaluation included full-scope evaluations in all or parts of the Chicago-Naperville-Arlington Heights MD; the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin MMSA; the Rockford, Illinois MSA; the St. Louis, Illinois MSA; the Rochester, Minnesota MSA; the Milwaukee-Waukesha-West Allis, Wisconsin MSA ("Milwaukee MSA"); the Green Bay, Wisconsin MSA; the Wisconsin Non-MSA AA (Ashland, Clark, Crawford, Dodge, Door, Forest, Green (2011-2013), Iron, Jefferson, Lincoln, Manitowoc, Marinette, Oneida, Portage, Price, Richland, Sauk, Sawyer, Shawano, Taylor, Vernon, Vilas, Walworth, Waupaca, and Wood counties); and the Madison, Wisconsin MSA. Limited-scope evaluations were performed of the bank's other AAs.

ciated Bank's employees participated in a variety of organizations that benefited LMI individuals, promoted economic development, and provided affordable housing. In the Milwaukee MSA, examiners found that Associated Bank's branches were accessible to individuals of different income levels and that the bank demonstrated an excellent level of service activities and excellent responsiveness to the affordable housing needs of the community. In Illinois, examiners found that the bank's branch distribution was accessible to essentially all portions of the bank's AAs and that the bank had a good level of community development services. In Minnesota, examiners concluded that the bank's branch distribution was accessible to limited portions of the Rochester, Minnesota MSA, the bank's full-scope AA in the state.

Associated Bank's Activities Since the Associated Bank Evaluation

Associated represents that, since the Associated Bank Evaluation, Associated Bank has strengthened its CRA performance across its AAs. In particular, Associated asserts that the bank has focused considerable efforts on improving its lending in LMI geographies across its AAs. Associated represents that, since the Associated Bank Evaluation, the bank has increased its lending to LMI individuals in key markets for the bank, such as the Milwaukee MSA, the Chicago AA, and the Minneapolis AA. In addition, Associated notes that the bank's Community Commitment Plan for 2016 through 2018 includes loans and grants to LMI and minority individuals and communities and an increased commitment to marketing the bank's products and services to LMI and minority individuals through outreach efforts, financial education programs, and partnerships with community groups. Associated represents that, as part of those efforts, the bank formed advisory councils in Chicago, Milwaukee, and Minneapolis through which it partners with a variety of community organizations. In addition, Associated notes that the bank has opened five new offices in LMI communities since its most recent CRA evaluation as part of its efforts to expand its presence in LMI geographies.

As part of its efforts to enhance its CRA program, Associated represents that Associated Bank has significantly increased its total qualified investments since the Associated Bank Evaluation. According to Associated, the bank's investments and grants support a variety of activities, including minority micro-enterprises and small businesses, job skills training, employment services, work-study programs for LMI students, and financial education. Associated asserts that the bank has continued to support its communities through an active volunteer program and has doubled the hours it has spent providing qualified community development services, compared to the hours reported in the Associated Bank Evaluation. Associated represents that the bank's service activities include participating on boards and committees of nonprofit organizations and providing financial literacy training.

CRA Performance of Bank Mutual

Bank Mutual was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of January 28, 2013 ("Bank Mutual Evaluation").[39] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.[40]

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[39] The Bank Mutual Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for HMDA loans, small business loans, investments, and services was January 1, 2008, through December 31, 2012. The evaluation period for community development loans was May 22, 2008, through January 28, 2013.

[40] The Bank Mutual Evaluation included full-scope evaluations in all or parts of the Appleton, Wisconsin MSA; the Eau Claire, Wisconsin MSA; the Green Bay, Wisconsin MSA; the Madison, Wisconsin MSA; the Milwaukee-Waukesha-West Allis, Wisconsin MSA; the Racine, Wisconsin MSA; the Wisconsin

Examiners concluded that Bank Mutual's lending levels reflected good responsiveness to the credit needs of its overall AAs. Examiners found that a high percentage of the bank's HMDA and small business loans was made within its AAs. Examiners concluded that the distribution of the bank's loans among borrowers of different income levels was good and that the bank's distribution of small business loans to small businesses was excellent. Examiners noted that the bank's overall distribution of HMDA and small business loans reflected adequate geographic distribution throughout the bank's AAs. Examiners found that the bank had numerous innovative or flexible loan products or services that helped to serve the credit needs of its AAs. Examiners noted that many of those products were especially beneficial to LMI borrowers.

Examiners concluded that Bank Mutual had an adequate level of qualified community development investments, grants, and donations. Examiners noted that the bank made numerous qualifying grants and donations during the review period, including to organizations that provide services to LMI individuals and families. Examiners found that the bank's delivery systems were accessible to essentially all portions of its overall AAs. Examiners found that the bank did not have branches or ATMs in low-income areas, but noted that the bank's percentage of branches and ATMs located in moderate-income AAs was commensurate with the demographics of its AAs as a whole.

Bank Mutual's Activities Since the Bank Mutual Evaluation

Associated represents that, since the Bank Mutual Evaluation, Bank Mutual has maintained strong CRA performance across its AAs, as reflected in the number and amount of the bank's HMDA, small business, and community development loans and qualified grants and donations made since 2013. Associated represents that Bank Mutual has utilized lending programs designed to assist LMI homebuyers and communities and has focused its community development lending, investments, and grant activity on supporting nonprofit organizations that support housing for LMI individuals. Associated also represents that Bank Mutual's community development service activities have included providing financial-related technical assistance to nonprofit community organizations and conducting homeownership counseling and first-time homebuyer education seminars.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of Associated Bank and Bank Mutual. The OCC reviewed the depository institution merger underlying this proposal, as well as the comments received by the Board. The Board has also considered the results of the most recent consumer compliance examinations of both Associated Bank and Bank Mutual conducted by the OCC, which included reviews of the depository institutions' compliance management systems and the depository institutions' compliance with certain fair lending laws and regulations. Examiners also conducted fair lending risk assessments of both institutions. In addition, the Board consulted with the CFPB regarding Associated Bank's consumer compliance record.

The Board has taken the consultations with the OCC and the CFPB and the information discussed above into account in evaluating the proposed transaction, including in considering whether Associated has the experience and resources to ensure that the organization

nonmetropolitan AA (consisting of all of Barron, Dodge, Door, Dunn, Green Lake, Marinette, Polk, Sawyer, Shawano, Washburn, and Waupaca counties, and a portion of Manitowoc County); and the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin MMSA. Limited-scope evaluations were performed of the bank's other AAs.

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 AAs.

Additional Convenience and Needs Considerations

The Board also considered other potential effects of the proposal on the convenience and needs of the communities to be served. Associated represents that, after consummation of the proposed transaction, it would consolidate certain duplicative products of the combined organization. Associated represents that it believes the products and services that would remain would be comparable to those currently offered by Associated Bank and Bank Mutual and would continue to meet the needs of the customers and AAs of Associated Bank and Bank Mutual.

Associated represents that Associated Bank would benefit from Bank Mutual's relationships with various community organizations, which would result in new outreach opportunities to increase the use of Associated Bank's products and services. In addition, Associated represents that the proposal would provide expanded product capabilities to customers of Bank Mutual, including access to Associated Bank's debit card transaction-based rewards program, modernized health savings account solutions, Small Business Administration loans, private banking services, a variety of new business lending products, and Associated Bank's higher lending limits and enhanced business capabilities. In addition, Associated represents that customers of Associated Bank and Bank Mutual would benefit from a larger branch and ATM network.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by Associated, 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") added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act."[41]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the

[41] Dodd-Frank Act § 604(e), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. § 1843(j)(2)(A).

resulting firm.[42] 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.[43]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[44]

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

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

Additional Public Benefits of the Proposal

As noted, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j)(2) of the BHC Act requires the Board to consider whether performance of the activity by a bank holding company can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.[46] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Associated Bank and Bank Mutual. In addition, the acquisition would ensure continuity and strength of service to these customers.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order, is not likely to result in

[42] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

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

[45] Associated and Bank Mutual Corp offer a range of retail and commercial banking products and services. Associated has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

[46] 12 U.S.C. § 1843(j)(2)(A).

significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of the proposal. Accordingly, the Board determines that the balance of the public benefits of the proposal under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the notice should be, and hereby is, approved.[47] 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 Associated with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and with the commitments made to the Board in connection with the notice. 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.

By order of the Board of Governors, effective January 23, 2018.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Associated/Bank Mutual Corp 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
Appleton, Wisconsin ("Appleton") – Defined as Outagamie County, Wisconsin (except Oneida township); Winchester, Clayton, Neenah, and Menasha townships in Winnebago County, Wisconsin; and Harrison, Woodville, Brillion, Rantoul, Chilton, Stockbridge, Brothertown and Charlestown townships in Calumet County, Wisconsin.						
Associated Pre-Consummation	3	$600.2M	12.8			
Bank Mutual Corp	25	$7.9M	0.1			
Associated Post-Consummation	3	$616.2M	13.2	1069	5	28

(continued on next page)

[47] A commenter requested that the Board hold a public hearing or meeting on the proposal. The Board's regulations provide for a hearing or notice under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.28(a)(2). 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. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Appendix—*continued*

Associated/Bank Mutual Corp 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
Beloit-Janesville, Wisconsin ("Beloit-Janesville") – Defined as Rock County, Wisconsin; plus Sumner township in Jefferson County, Wisconsin; and Albion township in Dane County, Wisconsin.						
Associated Pre-Consummation	1	$579.2M	21.5			
Bank Mutual Corp	16	$16.3M	0.6			
Associated Post-Consummation	1	$611.9M	22.6	1318	37	18
Chicago, Illinois ("Chicago") – Defined as Cook, DuPage, Lake, Will, Kane, McHenry, Kendall, DeKalb, Grundy, and Kankakee counties of Illinois; plus Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships of Iroquois County, Illinois; plus Roger, Mona, Pella, and Brenton townships in Ford County, Illinois; and Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, Wisconsin.						
Associated Pre-Consummation	15	$4.1B	1.1			
Bank Mutual Corp	169	$4.7M	Less than0.1			
Associated Post-Consummation	15	$4.1B	1.1	925	0	178
Eau Claire, Wisconsin ("Eau Claire") – Defined as Chippewa, Eau Claire, and Dunn counties of Wisconsin; Pepin County, Wisconsin (minus the towns of Stockholm and Pepin); the towns of Mondovi, Naples, Gilmanton, Dover, and Montana in Buffalo County, Wisconsin; the towns of Albion, Unity, Sumner, Chimney Rock, Hale, Burnside, Lincoln, and Pigeon in Trempealeau County, Wisconsin; and the towns of Garfield, Cleveland, Northfield, Garden Valley, and Alma in Jackson County, Wisconsin.						
Associated Pre-Consummation	10	$134.0M	3.5			
Bank Mutual Corp	15	$96.5M	2.5			
Associated Post-Consummation	3	$327.1M	8.4	649	22	29
Fond du Lac, Wisconsin ("Fond du Lac") – Defined as Fond du Lac County, Wisconsin (except Ashford, Auburn, and Calumet townships); and Lomira, Leroy, Chester, Burnett, Oak Grove, Trenton, Beaver Dam, Fox Lake, and Westford townships in Dodge County, Wisconsin.						
Associated Pre-Consummation	11	$89.9M	3.5			
Bank Mutual Corp	15	$26.3M	1			
Associated Post-Consummation	7	$142.7M	5.5	1390	-11	17
Madison, Wisconsin ("Madison") – Defined as Iowa, Sauk, Green, and Columbia counties of Wisconsin; Dane County, Wisconsin (except Albion township); Wayne township in Lafayette County, Wisconsin; plus Calamus, Elba, Portland, and Lowell townships in Dodge County, Wisconsin; and Waterloo, Lake Mills, and Oakland townships in Jefferson County, Wisconsin.						
Associated Pre-Consummation	2	$2.6B	13			
Bank Mutual Corp	45	$40.3M	0.2			
Associated Post-Consummation	2	$2.7B	13.4	668	8	56
Marinette, Wisconsin ("Marinette") – Defined as Marinette County, Wisconsin (minus Niagara town); and Menominee County, Minnesota (minus Meyer, Spalding, and Harris townships).						
Associated Pre-Consummation	6	$48.8M	4.8			
Bank Mutual Corp	7	$42.4M	4.2			
Associated Post-Consummation	3	$133.6M	12.8	1827	-22	12
Milwaukee, Wisconsin ("Milwaukee") – Defined as Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties of Wisconsin; East Troy township in Walworth County, Wisconsin; Somers, Paris, Brighton, and Wheatland townships in Kenosha County, Wisconsin; Jefferson County, Wisconsin (except Waterloo, Lake Mills, Oakland, and Sumner townships); Ashford and Auburn townships in Fond du Lac County, Wisconsin; and the eastern half of Dodge County, Wisconsin (Theresa, Herman, Williamstown, Hubbard, Rubicon, Ashippun, Hustisford, Lebanon, Clyman, Emmet, and Shields townships).						
Associated Pre-Consummation	4	$5.5B	7.5			
Bank Mutual Corp	19	$413.7M	0.5			
Associated Post-Consummation	4	$6.3B	8.7	2130	-6	57
Minneapolis/St. Paul, Minnesota ("Minneapolis/St. Paul") – Defined as Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota counties of Minnesota; Lent, Chisago Lake, Shafer, Wyoming, and Franconia townships in Chisago County, Minnesota; Blue Hill, Baldwin, Orrock, Livonia, and Big Lake townships and the city of Elk River in Sherburne County, Minnesota; Monticello, Buffalo, Rockford, and Franklin townships and the cities of Otsego, Albertville, Hanover, and Saint Michael in Wright County, Minnesota; Derrynane, Lanesburgh, and Montgomery townships and Montgomery city in Le Sueur County, Minnesota; and Hudson township in Saint Croix County, Wisconsin.						
Associated Pre-Consummation	8	$1.4B	0.8			
Bank Mutual Corp	108	$23.8M	Less than0.1			
Associated Post-Consummation	7	$1.5B	0.8	3170	-1	128
Red Wing, Minnesota ("Red Wing") – Defined as Goodhue County, Minnesota (minus Warsaw, Holden, Wanamingo, Minneola, Zumbrota, Kenyon, Cherry Grove, Roscoe, and Pine Island townships); Mount Pleasant and Lake townships in Wabasha County, Minnesota; Stockholm and Pepin townships in Pepin County, Wisconsin; and Pierce County, Wisconsin (minus the towns of Clifton, River Falls, Martell, Gilman, and Spring Lake).						

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Appendix—*continued*

Associated/Bank Mutual Corp 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
Associated Pre-Consummation	4	$124.1M	12.2			
Bank Mutual Corp	9	$31.0M	3			
Associated Post-Consummation	2	$186.2M	17.9	1217	103	15
Rice Lake, Wisconsin (“Rice Lake”) – Defined as Washburn and Barron counties of Wisconsin; and the towns of Lenroot, Hayward, Bass Lake, Sand Lake, and Edgewater in Sawyer County, Wisconsin.						
Associated Pre-Consummation	14	$25.9M	1.7			
Bank Mutual Corp	13	$30.4M	2			
Associated Post-Consummation	9	$86.7M	5.6	1082	-18	14
Saint Croix Falls, Wisconsin (“Saint Croix Falls”) – Defined as Burnett and Polk counties of Wisconsin; Saint Croix County, Wisconsin (minus the town of Hudson); and the towns of Clifton, River Falls, Martell, Gilman, and Spring Lake in Pierce County, Wisconsin.						
Associated Pre-Consummation	13	$29.2M	1.8			
Bank Mutual Corp	18	$6.1M	0.4			
Associated Post-Consummation	12	$41.5M	2.6	1015	-5	17
Sheboygan, Wisconsin (“Sheboygan”) – Defined as Sheboygan County, Wisconsin; Calumet township in Fond du Lac County, Wisconsin; Schleswig township in Manitowoc County, Wisconsin; and New Holstein township in Calumet County, Wisconsin.						
Associated Pre-Consummation	8	$120.3M	5.5			
Bank Mutual Corp	13	$34.7M	1.6			
Associated Post-Consummation	5	$189.8M	8.6	1150	6	14
Sturgeon Bay, Wisconsin (“Sturgeon Bay”) – Defined as Door County, Wisconsin.						
Associated Pre-Consummation	2	$144.7M	22.3			
Bank Mutual Corp	5	$16.8M	2.6			
Associated Post-Consummation	2	$178.3M	26.9	4796	0	4

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Orders Issued Under Bank Merger Act

Huron Community Bank
East Tawas, Michigan

Order Approving the Acquisition of Assets and Assumption of Liabilities
FRB Order No. 2018-02 (January 16, 2018)

Huron Community Bank ("Huron Bank"), the state member bank subsidiary of Huron Community Financial Services, Inc. ("Huron Financial"), both ofEast Tawas, Michigan, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[1] to acquire certain assets and assume certain liabilities of a branch of First Federal of Northern Michigan ("First Federal"), a federal savings association subsidiary of First Federal of Northern Michigan Bancorp, Inc. ("First Federal Bancorp"), both of Alpena, Michigan.

Under the proposal, Huron Bank would assume approximately $11.5 million of First Federal's $286.5 million in deposits, as well as acquire approximately $1.5 million of First Federal's loans and related assets. The deposits and assets are currently held at First Federal's branch in Oscoda, Michigan ("Oscoda Branch"), and, upon consummation of the proposal, would be integrated into Huron Bank.[2]

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.[3] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal in light of the factors set forth in the Bank Merger Act. As required by the Bank Merger Act, a report on the competitive effects of the proposal was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

Huron Financial is the 2,898th largest insured depository organization in the United States by deposits, controlling deposits of approximately $160.8 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions[4] in the United States.[5] Huron Financial controls Huron Bank, which has offices only in Michigan. Huron Bank is the 81st largest insured depository institution in Michigan, controlling approximately $160.8 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state. Huron Bank has total assets of approximately $215 million.[6]

First Federal Bancorp is the 1,890th largest insured depository organization in the United States by deposits, controlling deposits of approximately $286.5 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Federal Bancorp controls First Federal, which has offices only in

1 12 U.S.C. § 1828(c).

2 The Oscoda Branch is located at 201 North State Street, Oscoda, Michigan 48750. Huron Bank would not acquire the Oscoda Branch as a result of the transaction. Instead, Huron Bank would assume all of the deposit liabilities held at the branch as of the closing date of the transaction, in addition to a small amount of the branch's loans.

3 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

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

5 National deposit, ranking, and market share data are as of June 30, 2017. State deposit ranking data are as of June 30, 2017. Market deposit data are as of June 30, 2017.

6 Total asset data are as of September 30, 2017.

Michigan. The Oscoda Branch of First Federal has $11.5 million in deposits, which represents a small percentage of First Federal's total state deposits of $286.5 million. First Federal has total assets of $335.1 million.

On consummation of the proposal, Huron Financial would control approximately $172.3 million in deposits. Huron Bank would become the 77th largest insured depository institution in Michigan, controlling approximately 0.1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

The Bank Merger 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 Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[8]

Huron Bank and First Federal compete directly in the Oscoda, Michigan, banking market ("Oscoda market").[9] The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market ("market deposits") that Huron Bank would control;[10] the concentration level of market deposits and the increase in that level, 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 Oscoda market.

The competitive effects of the proposal in the Oscoda market warrant a detailed review because Huron Bank's pro forma share of market deposits exceeds 35 percent, using initial competitive screening data. Huron Bank is the largest competitor in the Oscoda market, controlling approximately $151.5 million in deposits, which represent approximately 44.5 percent of market deposits. First Federal is the fifth largest depository institution in the Oscoda market, controlling approximately $5.8 million in weighted deposits, which represent approximately 1.7 percent of market deposits. On consummation of the proposal, Huron Bank would remain the largest depository institution in the Oscoda market,

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7 12 U.S.C. § 1828(c)(5)(A).

8 12 U.S.C. § 1828(c)(5)(B).

9 The Oscoda market is defined as follows: Iosco County; Mason, Turner, and Whitney townships of Arenac County; and Alcona County, except Caledonia, Alcona, Haynes, and Mitchell townships — all in Michigan.

10 Local deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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 200points. 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 (August19,2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

controlling approximately $163.0 million in market deposits, which would represent approximately 47.1 percent of market deposits. The HHI in the market would increase by 192 points, from 3248 to 3440.

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 Oscoda market.[12] Several factors indicate that the increase in concentration in the Oscoda 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 one credit union in the Oscoda market that 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.[13] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This weighting takes into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels.

After consummation, adjusting to reflect competition from this credit union, the market concentration level in the Oscoda market as measured by the HHI would increase by 157 points, from a level of 2673 to 2830, and the market share of Huron Bank resulting from the transaction would increase from 39.3 percent to 41.7 percent.

The Board has also examined other aspects of the structure of the Oscoda 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 Oscoda market. The Oscoda market is a relatively small, rural banking market, and the change in Huron Bank's market share would be relatively small. Although consummation of this proposal would eliminate one existing competitor, the market would continue to be served by five depository institutions, including the credit union noted above. These include, apart from Huron Bank, one depository institution with a more than 25 percent share of market deposits and two depository institutions each with a more than 10 percent share of market deposits. In addition, the Board has considered the competitive influence of a second credit union that serves a significant portion of the Oscoda market.[14] The presence of these market competitors suggests that Huron Bank would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on Huron Bank in the Oscoda market.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a

[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 Corporation* , 84 *Federal Reserve Bulletin* 129 (1998).

[13] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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); T*he 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).

[14] The Board finds that the presence of this credit union increases competition in the Oscoda market. However, because the membership criteria only includes a simple majority rather than essentially the entire market population, the deposits of this credit union are not included in calculating market influence.

significantly adverse effect on competition in any relevant banking market, including the Oscoda 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 market, the number of remaining competitors, 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 Oscoda 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 Bank Merger 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 subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal 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.

Huron Bank is well capitalized and would remain so on consummation of the proposal. As noted, the proposed transaction involves an assumption of deposits and an acquisition of loans and related assets. Huron Bank appears to have adequate financial resources to effect the proposal. The asset quality, earnings, and liquidity of Huron Bank are consistent with approval, and Huron Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the deposits to be assumed and assets to be acquired. In addition, the future prospects of Huron Bank are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of Huron Bank after consummation of the proposal. The Board has reviewed the examination record of Huron Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered information provided by Huron Bank; the Board's supervisory experiences with the institution; and Huron Bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Huron Bank is considered to be well managed. Huron Bank's board of directors and senior management have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal. Huron Bank has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal.

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[15] 12 U.S.C. § 1828(c)(5).

Huron Bank would continue to apply its risk-management policies, procedures, and controls following the acquisition, and these are considered acceptable from a supervisory perspective. In addition, Huron Bank's management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal.

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

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.[16] 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 these communities, 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").[17] 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 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 the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. 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 of the facts of record, including reports of examination of the CRA performance of Huron Bank and First Federal; the compliance record of Huron Bank; the supervisory views of the Federal Reserve Bank of Chicago ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"); confidential supervisory information; and information provided by Huron Bank.

[16] 12 U.S.C. § 1828(c)(5).

[17] 12 U.S.C. § 2901 *et seq.*

[18] 12 U.S.C. § 2901(b).

[19] 12 U.S.C. § 2903.

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.[20] In this case, the Board considered the supervisory views of the Reserve Bank and the OCC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[21] 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 data reported under the Home Mortgage Disclosure Act of 1975,[22] automated loan reports, and other reports generated by the institution 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 the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas ("AAs"), 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 the institution's performance.[23]

CRA Performance of Huron Bank

Huron Bank was assigned an overall "Satisfactory" rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 ("Huron Bank Evaluation").[24] Examiners found that Huron Bank's average loan-to-deposit ratio, which is a measure of the overall level of lending, was reasonable given its financial condition and AA credit needs. Examiners also found that a majority of the bank's home mortgage and small business loans were originated within its AA and that the geographic distribution of those loans reflected reasonable dispersion throughout the bank's AA. Examiners determined that the distribution of the bank's home mortgage loans reflected reasonable penetration among individuals of different income levels. Examiners noted that the distribution of the bank's home mortgage loans to low-income borrowers was reasonable. Examiners also noted that the percentage of the bank's home mortgage loans to moderate-income borrowers, as measured by loan volume and dollar amount, was comparable to the percentage of moderate-income families in its AA. In addition, examiners determined

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

[21] 12 U.S.C. § 2906.

[22] 12 U.S.C. § 2801 *et seq*.

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

[24] The Huron Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed home mortgage loans and small business loans from January 1, 2014, through December 31, 2014. The Huron Bank Evaluation included a full-scope evaluation in the Michigan Non-Metropolitan Statistical Area (consisting of Alcona, Arenac, and Iosco counties), its sole AA.

that the distribution of Huron Bank's small business lending reflected reasonable penetration among businesses of different sizes.

CRA Performance of First Federal

First Federal was assigned an overall CRA rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of September 29, 2014 ("First Federal Evaluation").[25] Examiners determined that First Federal's average loan-to-deposit ratio was more than reasonable given the bank's size and financial condition and the credit needs of its community.

Examiners found that First Federal's lending levels within its AA were excellent and that a substantial majority of the bank's loans were made within the bank's AA. According to examiners, the geographic distribution of residential mortgage and business loans throughout the bank's AA was excellent. Examiners also noted that First Federal's distribution of loans to borrowers reflected reasonable penetration among retail customers of different income levels and businesses of different sizes.

Examiners determined that First Federal engaged in a variety of qualified community development investments and grants, including contributions to affordable housing, economic development, revitalization and stabilization of business districts, and community services to LMI individuals and households. Examiners further noted that the bank exhibited excellent responsiveness to community development service needs.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Huron Bank conducted by Reserve Bank examiners, which included a review of the bank's consumer compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board has also considered the results of the most recent examination of First Federal conducted by the OCC, which included a review of the bank's compliance function and the bank's compliance with certain consumer protection laws and regulations.

The Board has taken this information, as well as the CRA performance records of Huron Bank and First Federal, into account in evaluating the proposed transaction, including in considering whether Huron Financial has the experience and resources to ensure that Huron Bank helps to meet the credit needs of the communities within its AA.

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. Huron Bank represents that it does not have any plans to discontinue or significantly change any of its products or services as a result of the proposal. In addition, Huron Bank represents that customers of First Federal that become customers of Huron Bank as a result of the proposed transaction would have access to the same products and services that are currently available to customers of Huron Bank. Furthermore, Huron Bank represents that these First Federal customers would benefit from access to Huron Bank's branch network, which includes three branches within approximately 20 miles of the Oscoda Branch of First Federal.

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[25] The First Federal Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed residential mortgage loans and business loans from 2012 and 2013. The First Federal Evaluation included an evaluation of its sole AA, consisting of Alcona, Alpena, Charlevoix, Cheboygan, Crawford, Emmet, Iosco, Montmorency, Ogemaw, Oscoda, Otsego, and Presque Isle counties in Michigan.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the Reserve Bank and the OCC, confidential supervisory information, information provided by Huron Bank, 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 the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[26]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] 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.[28]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[29]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. 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 organization in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with

[26] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1602 (2010), codified at 12 U.S.C. § 1828(c)(5).

[27] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

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

other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Huron Bank with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 by the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective January 16, 2018.

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

Ann E. Misback
Secretary of the Board

IBERIABANK
Lafayette, Louisiana

Order Approving the Merger of Depository Institutions and Establishment of Branches
FRB Order No. 18-06 (February 21, 2018)

IBERIABANK, the state member bank subsidiary of IBERIABANK Corporation ("IBKC"),[1] both of Lafayette, Louisiana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with Gibraltar Private Bank & Trust Company ("Gibraltar"), Coral Gables, Florida, a federal savings bank, with IBERIABANK as the surviving entity. IBERIABANK also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of Gibraltar's main office and branches.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation. 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 the Bank Merger Act and the FRA.

IBKC, with consolidated assets of approximately $28.0 billion, is the 65th largest insured depository organization in the United States, controlling deposits of approximately $21.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] IBKC controls IBERIABANK, which has offices in eight states. IBKC is the 14th largest insured depository organization in Florida, with approximately $8.7 billion in deposits, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state.[6]

Gibraltar, with consolidated assets of approximately $1.6 billion, is the 476th largest insured depository organization in the United States, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Gibraltar has offices in Florida and New York. Gibraltar is the 49th largest insured depository institution in Florida, with approximately $1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in Florida. Gibraltar is the 173rd largest insured depository institution in New York, with approximately $79.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in New York.

On consummation of the proposal, IBKC would become the 64th largest depository organization in the United States, with consolidated assets of approximately $29.6 billion. IBKC would control approximately $22.4 billion in deposits, representing less than 1 percent of the total deposits of insured depository institutions in the United States. IBKC would continue to operate the 14th largest insured depository institution in Florida,

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1 IBKC is a financial holding company within the meaning of the Bank Holding Company Act of 1956.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in the Appendix.

4 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

5 Asset and nationwide deposit-ranking data are as of September 30, 2017, unless otherwise noted. In this context, insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

6 State deposit-ranking data are as of June 30, 2017, unless otherwise noted.

controlling deposits of approximately $9.7 billion, representing approximately 1.7 percent of the total deposits of insured depository institutions in the state. IBKC would operate the 173rd largest insured depository institution in New York, controlling deposits of approximately $79.2 million, representing less than 1 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

The Bank Merger Act generally provides that the Board may not approve an application by one insured depository institution to acquire another insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[7] For purposes of the Bank Merger Act, the home state of IBERIABANK is Louisiana and the home state of Gibraltar is Florida.[8] Consummation of the proposal would result in IBERIABANK controlling less than 1 percent of the deposits of insured depository institutions in the United States. The proposed acquisition of Gibraltar would not be prohibited by the law of any state in which Gibraltar is located.[9] Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger 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.[10] 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 effect of the transaction in meeting the convenience and needs of communities to be served.[11]

IBERIABANK and Gibraltar compete directly in the Miami-Fort Lauderdale and Naples, Florida banking markets.[12] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in each market; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that IBERIABANK would control;[13] the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index

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7 12 U.S.C. § 1828(c)(13).

8 A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §1828(c)(13)(C)(ii)(II). A federal savings association's home state is the state in which the home office of the savings association is located. 12U.S.C.§1828(c)(13)(C)(ii)(III).

9 Florida law permits an out-of-state bank to acquire a Florida bank through an interstate merger provided the resulting bank would not control 30 percent or more of the total amount of deposits held by all insured depository institutions in Florida. *See* Fla. Stat. Ann. §658.2953. On consummation, IBERIABANK would control less than 30percent of the total deposits of insured depository institutions in Florida. New York does not have a deposit cap applicable to this proposal.

10 12 U.S.C. § 1828(c)(5)(A).

11 12 U.S.C. § 1828(c)(5)(B).

12 The Miami-Fort Lauderdale banking market includes Broward and Miami-Dade counties, and the Naples banking market consists of Collier County, all in Florida.

13 Local deposit and market share figures are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See*, *e.g.*,

("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[14] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for these markets. On consummation of the proposal, both the Miami-Fort Lauderdale and Naples, Florida banking markets would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in each market would be minimal, and numerous competitors would remain in each market.[15]

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 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 Miami-Fort Lauderdale and Naples banking markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] 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

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* 53 (1991).

[14] 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 have 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.

[15] In the Miami-Fort Lauderdale banking market, IBKC operates the 13th largest depository institution, controlling approximately $3.2 billion in deposits, which represent approximately 1.8 percent of market deposits. Gibraltar is the 39th largest depository institution in the same market, controlling approximately $412.2 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would become the 12th largest depository organization in the market, controlling deposits of approximately $4.0 billion, which represent approximately 2.2 percent of market deposits. The HHI for the Miami-Fort Lauderdale banking market would decrease by 2 points to 793, and 78 competitors would remain in the market.

In the Naples banking market, IBKC operates the 5th largest depository institution, controlling approximately $991.8 million in deposits, which represent approximately 5.9 percent of market deposits. Gibraltar is the 33rd largest depository institution in the market, controlling approximately $21.8 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would remain the 5th largest depository organization in the market, controlling deposits of approximately $1.0 billion, which represent approximately 6.2 percent of market deposits. The HHI for the Naples banking market would increase by 1 point to 957, and 35 competitors would remain in the market.

[16] 12 U.S.C.§1828(c)(5).

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

IBERIABANK and Gibraltar are well capitalized, and IBERIABANK would remain so on consummation of the proposed transaction. The proposal is a merger structured as a stock conversion.[17] The asset quality, earnings, and liquidity of IBERIABANK and Gibraltar are consistent with approval. IBERIABANK appears to have adequate resources to absorb the costs of the proposal and to integrate Gibraltar's operations. In addition, the future prospects of IBERIABANK are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of IBERIABANK after consummation of the proposal. The Board has reviewed the examination records of IBKC, IBERIABANK, and Gibraltar, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by IBERIABANK; the Board's supervisory experiences and those of other relevant bank supervisory agencies with IBERIABANK and Gibraltar; and the organizations' record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

IBERIABANK and Gibraltar are considered to be well managed. IBERIABANK's board of directors and senior management have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal.

The Board has also considered IBERIABANK's plans for implementing the proposal. IBERIABANK has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. IBERIABANK would apply its risk-management policies, procedures, and controls at the combined organization and these are considered acceptable from a supervisory perspective. In addition, IBERIABANK's management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal.

Based on all the facts of record, including IBERIABANK'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, as well as the records of effectiveness of the organizations in combatting money-laundering activities, are consistent with approval.

[17] At the effective time of the merger, each share of Gibraltar common stock would convert into a right to receive shares of IBKC common stock.

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.[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 these communities, 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").[19] 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 the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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 following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of IBERIABANK and Gibraltar, the compliance records of both banks, the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by IBERIABANK, and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal, expressing fair lending and convenience and needs concerns with respect to IBERIABANK.[22] The commenter alleged that IBERIABANK's current branching activities in African American communities and the bank's marketing of products and services to African American businesses and professionals are limited. Specifically, the commenter asserted that IBERIABANK has avoided placing branches in proximity to densely populated African American neighborhoods.[23] In

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18 12 U.S.C. § 1828(c)(5).

19 12 U.S.C. § 2901 *et seq*.

20 12 U.S.C. § 2901(b).

21 12 U.S.C. § 2903.

22 The commenter also alleged that IBERIABANK has engaged in discriminatory employment practices. A bank's internal employment practices, however, are outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the Bank Merger Act.

23 For example, the commenter alleged that IBERIABANK has established no branches in the African American communities of South Atlanta, in Georgia, and South Dallas and South Houston, in Texas. In addition, the commenter contends that only seven of IBERIABANK's branches are located in low-income neighborhoods and that five of these branches appear to engage in limited deposit-taking activities, which the commenter alleges indicates minimal activity and commitment in these communities.

addition, the commenter alleged that IBERIABANK does not have an organized outreach program for developing commercial lending relationships with African American businesses and professionals.[24] Based on these alleged practices, the commenter expressed concern that IBERIABANK will not meet the needs of disadvantaged African American communities in South Florida if the proposal is approved.

Business of the Involved Institutions and Response to the Public Comment

Through its network of branches in seven states,[25] IBERIABANK offers a range of retail and commercial products and services to individual customers and businesses, including checking, savings, money market, and certificate of deposit accounts; consumer, residential, commercial, construction, and auto loans; wealth management services; credit card and merchant card services; and treasury management services.

Gibraltar provides private comprehensive wealth management and private banking services to individuals and families, businesses, foundations, and nonprofit organizations. Gibraltar also offers commercial, commercial real estate, construction and land development, and consumer loans.

In response to the commenter's allegations, IBERIABANK states that it has an extensive legacy of meeting the needs of all communities in its footprint, including LMI communities, and highlights a community development plan the bank entered into with the National Community Reinvestment Coalition that became effective on January 1, 2018 ("CRA Plan").

With respect to the commenter's allegations about IBERIABANK's branch locations, the bank notes that as part of its most recent CRA performance evaluation, Reserve Bank examiners found the bank's retail delivery systems to be reasonably accessible to the bank's geographies and to individuals of different income levels in its assessment areas ("AAs"). The bank asserts that it is committed to maintaining this accessibility for individuals of different income levels throughout the communities it serves. IBERIABANK represents that it currently operates 47 active, full-service branches in LMI census tracts, representing approximately 22.6 percent of all of IBERIABANK's full-service branches, and that, as part of its CRA Plan, it has agreed to open two new bank branches in LMI census tracts, one in Miami-Dade County, Florida, and one in Atlanta, Georgia.

In response to the commenter's criticism that IBERIABANK has no organized outreach program to African American businesses and professionals, IBERIABANK asserts that it does not develop or target products or services specifically based on race or ethnicity because it does not assume all borrowers of a particular race or ethnicity have the same credit needs. IBERIABANK represents that it recognizes the credit challenges faced by LMI communities and has developed initiatives designed to meet the credit needs of such communities, including through community development loans, CRA-qualified investments, and affordable financial product offerings to improve banking access for underserved communities. IBERIABANK asserts that, among other programs designed specifically to meet the needs of LMI communities, it has created the IBERIABANK Subsidy

[24] The commenter alleged that IBERIABANK only finances African American businesses and professionals that come into the bank's offices, rather than actively soliciting business from them in their communities, in markets such as Atlanta, Dallas, and Houston, where there are a large number of creditworthy African American businesses.

[25] IBERIABANK has branch locations in Louisiana, Florida, Arkansas, Alabama, Texas, Tennessee, and Georgia. IBERIABANK does not operate any full-service branches in South Carolina, but has one limited service administrative office in that state, which does not accept deposits or make loans. In addition, IBERIABANK has recently been approved to establish a branch in North Carolina.

Program to provide $4,000 in down-payment and closing-cost assistance for the purchase or refinancing of loans for LMI borrowers. The bank also offers an unsecured home improvement loan designed to assist homeowners who lack equity, invests in Low-Income Housing Tax Credit projects that provide affordable rental housing, and provides grants and donations to community development organizations engaged in community services for LMI individuals and communities. IBERIABANK further represents that the bank will provide support to LMI communities in those states where it currently has a branch presence consistent with its CRA 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 institution, as well as information and views provided by the appropriate federal supervisors.[26] In this case, the Board considered the supervisory views of the Reserve Bank and the OCC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution, such as IBERIABANK, 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 under the Home Mortgage Disclosure Act ("HMDA"),[28] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including the number and amounts of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[29] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit

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

[27] 12 U.S.C. § 2906.

[28] 12 U.S.C. § 2801 *et seq*.

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

needs of LMI individuals and geographies.[30] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[31]

CRA Performance of IBERIABANK

IBERIABANK was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 5, 2013 ("IBERIABANK Evaluation").[32] IBERIABANK received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[33]

Examiners found IBERIABANK's overall lending performance to be good in Alabama, Arkansas, Louisiana, and Texas and adequate in Florida and Tennessee. Examiners found that IBERIABANK originated a substantial majority of its loans within its AAs, reflecting excellent AA penetration. Examiners found that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate. Examiners noted that the overall distribution of small business lending reflected adequate penetration in LMI geographies and among small businesses (businesses with revenues of $1 million or less). Examiners further noted that the bank made a high level of community development loans during the review period. The community development loans were for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by financing small businesses that resulted in job creation and/or retention, revitalizing and/or stabilizing targeted LMI census tracts or other qualified geographies, and community services targeted to LMI individuals.

In the Houston AA, an area of concern to the commenter, examiners considered IBERIABANK's lending performance to be good. The geographic distribution of small business loans was found to reflect good penetration throughout the AA, and examiners noted that the bank's small business lending in low-income census tracts was excellent.

Examiners found IBERIABANK's investment performance to be excellent in Louisiana, good in Alabama, Arkansas, and Texas, and adequate in Florida and Tennessee. Examiners noted that IBERIABANK had made substantial qualified investments and provided

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30 *See* 12 CFR 228.22(b).

31 *See* 12 CFR 228.21 *et seq* .

32 The IBERIABANK Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2011, through December 31, 2012. The evaluation period for community development loans and investments was January 1, 2011, through March 31, 2013. Due to IBERIABANK's significant expansion and growth during the review period, the bank's performance in 2012 was weighted slightly more than its performance in 2011 in determining the final rating for lending.

33 The IBERIABANK Evaluation included a full-scope review in the New Orleans-Metairie-Kenner MSA; Lafayette MSA; Little Rock-North Little Rock-Conway MSA; Fayetteville-Springdale-Rogers MSA; North Port-Bradenton-Sarasota MSA; Naples-Marco Island MSA; Birmingham-Hoover MSA; Houston-Sugar Land-Baytown MSA; and Memphis-Forest City Combined Statistical Area. A limited-scope review was performed in Baldwin County, Alabama; Huntsville MSA; Mobile MSA; Montgomery MSA; Jonesboro MSA; Northeast Arkansas; Palm Beach-Broward MSA; Ft.Myers MSA; Florida Keys, Florida; Acadiana, Louisiana; Allen, Louisiana; Baton Rouge MSA; Houma MSA; Lake Charles MSA; Lincoln, Louisiana; Monroe MSA; Morehouse, Louisiana; and Shreveport MSA.

The IBERIABANK Evaluation did not include a review of Dallas or Atlanta, areas of concern to the commenter, because IBERIABANK did not enter the Dallas market until completion of its acquisition of First Private Bank or the Atlanta market until completion of its acquisition of Georgia Commerce Bancshares Inc., both in 2015.

significant financial support to address the needs for affordable housing, financial counseling, emergency assistance, job training, and the revitalization of LMI communities.

Examiners highlighted the bank's provision of an excellent level of community development services throughout its AAs. Examiners found the bank's retail delivery systems to be reasonably accessible to geographies and individuals of different income levels and that the bank's record of opening and closing branches had not adversely affected the accessibility of delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that the bank offered several retail products designed to meet the financial needs of lower-income customers and small businesses and that the bank participated in organized programs and other outreach efforts to expand banking access to LMI customers across its entire banking footprint. During the examination review period, the bank and its employees provided over 10,000 hours of community development services through service activities aimed at promoting or facilitating affordable housing for LMI individuals, economic development, and the revitalization of LMI areas.

In the Houston AA, an area of concern to the commenter, IBERIABANK's performance was found to be adequate. Examiners observed that the bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels, including LMI geographies and individuals. Examiners also noted that IBERIABANK provided a relatively high level of community development services that benefited residents of, and small businesses in, the Houston AA. During the review period, the bank and its employees provided almost 500 hours of community development services, including providing financial education, homeownership counseling, and small business assistance, as well as working with a variety of organizations that provided community services in LMI geographies and for LMI individuals.

IBERIABANK's Efforts since the IBERIABANK Evaluation

IBERIABANK represents that, since the IBERIABANK Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. IBERIABANK also represents that it has opened eight bank branches in LMI communities since the IBERIABANK Evaluation, including one in Dallas and one in Houston, and that it has committed to open two new bank branches in LMI census tracts, including one in Miami-Dade County and one in Atlanta.

IBERIABANK asserts that it has continued to make a high level of community development loans throughout its AAs to increase affordable housing, revitalize LMI geographies, and promote economic development through financing small businesses in LMI communities. IBERIABANK represents that since the IBERIABANK Evaluation it has originated community development loans to support nonprofit organizations involved in affordable housing and economic activities that benefit LMI individuals and communities in Atlanta, has maintained its high level of community development lending in Houston, and has partnered with the Dallas Habitat for Humanity to provide affordable mortgage loans to its clientele and extended a line of credit to the nonprofit organization LiftFund for its minority-owned small business loan fund that targets businesses in the Dallas market.

IBERIABANK also represents that it made an equity investment in Liberty Financial Services, the holding company of Liberty Bank, an African-American owned financial institution. In addition, the bank has offered a suite of products and services to address the financial needs of LMI borrowers, including mortgage loan products and low-cost individual development accounts.

As noted, as part of its CRA Plan, the bank has agreed to commitments and goals designed to meet the needs of underserved communities in the states in which the bank currently has a branch presence. Such commitments and goals relate to mortgage and small business lending, community development lending and investments, philanthropy, and increasing access to financial services in LMI communities. IBERIABANK represents that it has committed to increase its small business lending in LMI census tracts by 5 percent annually for the first three years and by 2.5 percent annually for the last two years of the plan. IBERIABANK also represents that it has committed to increase home mortgage lending to LMI borrowers and LMI geographies by 3 percent annually over five years.

CRA Performance of Gibraltar

Gibraltar was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of July 11, 2016 ("Gibraltar Evaluation").[34] Gibraltar received "Outstanding" ratings for the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.[35] Although Gibraltar's overall rating took into consideration the bank's performance in each AA that received a full-scope review, examiners gave the greatest weight to the bank's record in the Miami-Dade-Broward AA due to the higher volume of deposits and loans in that area.

Examiners found that Gibraltar demonstrated excellent responsiveness to the credit needs of its AAs. Examiners noted that, overall, Gibraltar originated a substantial majority of its loans within its AAs. Examiners found that the bank had good distribution among borrowers of different income levels and that the geographic distribution of loans reflected good penetration. Examiners also determined that the bank made an excellent level of community development loans.

Examiners found that the bank's community development investments were responsive to the credit needs of its AAs in the state of Florida, primarily addressing the need for rehabilitation of affordable housing for LMI individuals. Examiners observed that the bank's retail delivery systems were adequately distributed throughout the bank's AAs. Moreover, branches were found to be reasonably accessible to geographies and individuals of different income levels in Florida.[36]

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination of IBERIABANK conducted by Reserve Bank examiners, which included a review of the

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[34] The Gibraltar Evaluation was conducted using Large Bank CRA Examination Procedures. The examiners reviewed residential mortgage and small business loans from January 1, 2013, through December 31, 2015. The evaluation period for community development loans and services was January 1, 2013, through December 31, 2015. The evaluation period for community development investments was August 1, 2013, through February 29, 2016.

[35] The Gibraltar Evaluation included a full-scope evaluation of the Miami-Dade-Broward AA and the New York-Northern New Jersey-Long Island, New York-New Jersey-Pennsylvania MSA ("NY-NJ-PA MSA"). The Miami-Dade-Broward AA is composed of the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida Metropolitan Division ("MD"), and the Miami-Miami Beach-Kendall, Florida MD. A limited-scope review was performed in the Collier County, Florida MSA, and Monroe County, Florida Non-MSA. The ratings in the State of Florida were based on the bank's performance in the Miami-Dade-Broward AA.

[36] None of Gibraltar's Florida branches is located in a LMI geography. Although two Florida branches are in reasonable proximity to LMI geographies, ease of access is limited due to their location within commercial office towers. However, Gibraltar offers electronic banking services that include no-charge automated teller machine ("ATM") access when using Publix Supermarket's PRESTO ATM network, online banking, and mobile banking. Gibraltar's New York branch is located in proximity to LMI geographies, but primarily provides wealth management services. However, Gibraltar offers electronic banking services in New York, including through ATM networks, online banking, and mobile banking.

bank's consumer compliance risk-management program. The Board has considered the preliminary results of a pending review of IBERIABANK's compliance with the Fair Housing Act ("FHA"),[37] which included a redlining analysis, and the results of a previous review of IBERIABANK's compliance with the FHA. The Board also considered the preliminary results of a new CRA evaluation of IBERIABANK and considered IBERIABANK's supervisory record with the Consumer Financial Protection Bureau. Moreover, the Board has considered the results of the most recent consumer compliance examination of Gibraltar conducted by the OCC, which included a review of the bank's consumer compliance program and compliance with certain consumer protection laws and regulations.

The Board has taken this information, as well as the CRA performance records of both banks, into account in evaluating the proposal, including in considering whether IBERIABANK has the experience and resources to ensure that it helps to meet the credit needs of the communities within its AAs.

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. IBERIABANK represents that, following consummation of the proposal, existing customers of IBERIABANK and legacy customers of Gibraltar would benefit from an expanded branch and ATM network, expanded commercial loan capacity, and a broader range of financial products and services. IBERIABANK also represents that it does not expect to discontinue any material products or services currently provided by Gibraltar.

Conclusions 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 consumer protection laws, supervisory views of the Reserve Bank and the OCC, confidential supervisory information, information provided by IBERIABANK, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") added "risk to the stability of the United States banking or financial system" as a factor that must be considered under the Bank Merger Act.[38]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the

[37] 42 U.S.C. § 3601 *et seq.*

[38] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), amending 12 U.S.C. § 1828(c)(5).

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]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[41]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. As noted, the acquirer is predominately engaged in a variety of consumer and commercial banking activities, and the target engages in private wealth management and commercial and consumer loan activities. The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Establishment of Branches

As noted, IBERIABANK has applied under section 9 of the FRA to establish branches at the current locations of Gibraltar.[42] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered IBERIABANK's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and invest-

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

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

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

[42] *See* 12U.S.C.§321. Under section 9 of the FRA, a state member bank may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C.§36(b)(2) and (c). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming a bank. Dodd-Frank Act §341, Pub. L. No. 111-203, 124 Stat. 1376, 1540-41 (2010)), codified at 12 U.S.C.§ 5451. Upon consummation, IBERIABANK's branches would be permissible under applicable state law. *See* Fla. Stat. Ann. §658.2953 and N.Y. Banking Law Article 5-C, §§ 223 and 225.

ment in bank premises.[43] 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 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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBERIABANK 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. 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective February 21, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix

Branches to be Established by IBERIABANK

Florida Branches

450 East Las Olas Boulevard, Suite 1220
Fort Lauderdale, Florida

5551 Ridgewood Drive, Suite 100
Naples, Florida

200 South Biscayne Boulevard, Suite 2850
Miami, Florida

1575 San Ignacio Avenue
Coral Gables, Florida

55 Alhambra Plaza, 8th Floor
Coral Gables, Florida

400 Arthur Godfrey Road, Suite 102
Miami Beach, Florida

[43] 12 U.S.C.§§321 and 322; 12 CFR 208.6. In addition, upon consummation of the proposal, IBERIABANK's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

35 Ocean Reef Drive, Suite 100
Key Largo, Florida

New York Branch

280 Park Avenue, 29th Floor
New York, New York

First Financial Bancorp
Cincinnati, Ohio

First Financial Bank
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, and Determination on a Financial Holding Company Election
FRB Order No. 2018-07 (February 22, 2018)

First Financial Bancorp ("First Financial"), Cincinnati, Ohio, 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 merge with MainSource Financial Group, Inc. ("MainSource"), and thereby indirectly acquire MainSource Bank, both of Greensburg, Indiana.

In addition, First Financial's subsidiary state member bank, First Financial Bank, Cincinnati, Ohio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with MainSource Bank, with First Financial Bank as the surviving entity.[3] First Financial Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of MainSource Bank.[4]

In connection with this proposal, First Financial also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (*l*) of the BHC Act and section 225.82 of the Board's Regulation Y.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 195 (October 11, 2017)).[6] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger of First Financial Bank and MainSource Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

First Financial, with consolidated assets of approximately $8.8 billion, is the 149th largest insured depository organization in the United States. First Financial controls approximately $6.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] First Financial controls First Financial Bank, which operates in Indiana, Kentucky, and Ohio. First Financial is the 14th largest insured depository organization in Indiana, controlling deposits of approximately $2.8 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state. First Financial is the 71st largest insured depository organization in Kentucky, controlling deposits of approximately $187.7 million,

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in Appendix A.
5 12 U.S.C. § 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 Nationwide asset and deposit data are as of September 30, 2017, unless otherwise noted.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8] First Financial is the 11th largest insured depository organization in Ohio, controlling deposits of approximately $3.6 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

MainSource, with consolidated assets of approximately $4.6 billion, is the 218th largest insured depository organization in the United States. MainSource controls approximately $3.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MainSource controls MainSource Bank, which operates in Illinois, Indiana, Kentucky, and Ohio. MainSource is the 233rd largest insured depository organization in Illinois, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 17th largest insured depository organization in Indiana, controlling deposits of approximately $2.3 billion, which represent 1.8 percent of the total deposits of insured depository institutions in that state. MainSource is the 31st largest insured depository organization in Kentucky, controlling deposits of approximately $486.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 41st largest insured depository organization in Ohio, controlling deposits of approximately $613.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Financial would have consolidated assets of approximately $13.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States.[9] First Financial would control total deposits of approximately $10.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, First Financial would become the 233rd largest insured depository organization, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Indiana, First Financial would become the 6th largest insured depository organization, controlling deposits of approximately $5.1 billion, which represent 4.1 percent of the total deposits of insured depository institutions in that state. In Kentucky, First Financial would become the 24th largest insured depository organization, controlling deposits of approximately $674.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Ohio, First Financial would remain the 11th largest insured depository organization, controlling deposits of approximately $4.2 billion, which represent approximately 1.2 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.[10] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited

[8] State deposit data are as of June 30, 2017, unless otherwise noted.

[9] Excluding purchase accounting adjustments, First Financial would become the 109th largest insured depository institution in the United States, with consolidated assets of approximately $13.4 billion.

[10] 12 U.S.C. § 1842(d)(1)(A).

under state law.[11] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[12] In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

For purposes of the BHC Act, the home state of First Financial is Ohio, and MainSource Bank is located in Illinois, Indiana, Kentucky, and Ohio.[14] For purposes of section 44 of the FDI Act, the home state of First Financial Bank is Ohio, and the home state of MainSource Bank is Indiana. First Financial and First Financial Bank are well capitalized and well managed under applicable law, and First Financial Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Neither Indiana nor Kentucky has statutory minimum age requirements,[16] and MainSource Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Kentucky imposes a 15 percent limit on the total amount of in-state deposits that a single banking organization may control.[17] Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[18] The combined organization would control approximately 4.1 percent of the total amount of deposits of insured depository institutions in Indiana, approximately 0.9 percent of the total amount of deposits of insured depository institutions in Kentucky, and approximately 1.2 percent of the total amount of deposits of insured depository institutions in Ohio, the only states in which First Financial and MainSource have overlapping banking operations. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including First Financial Bank'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 both statutes.

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11 12 U.S.C. § 1831u(a)(1).

12 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

13 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C.§1841(o)(4)–(7).

14 *See* 12 U.S.C. §§ 1831u(g)(4) and 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

15 12 U.S.C. § 2901 *et seq*.

16 *See* Ind. Code § 28-2-17; Ky. Rev. Stat. Ann. 286.3-900. Illinois has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of that state. *See* 205 Ill. Comp. Stat. 5/21.2. This age requirement is not applicable to the proposed transaction because MainSource Bank is organized under the laws of Indiana.

17 Ky. Rev. Stat. Ann. § 286.3-900(2), -920(4). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

18 Ohio Rev. Code Ann. § 1115.05.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[19] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[20]

First Financial and MainSource have subsidiary depository institutions that compete directly in eight banking markets in Indiana and Ohio.[21] The Board has considered the competitive effects of the proposal in each of these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market ("market deposits") that First Financial would control;[22] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[23] other characteristics of the markets; and, as discussed below, commitments made by First Financial to divest three branches in the Columbus market and one branch in the Greensburg market.

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 five of the eight banking markets in which First Financial Bank and MainSource Bank compete directly.[24] On consummation of the proposal, one of these markets would remain highly concentrated, and the four other markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market and the moderately concentrated banking markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in all five banking markets.

[19] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

[20] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[21] The Columbus banking market ("Columbus market"), Fayette County banking market ("Fayette County market"), and Greensburg banking market ("Greensburg market"), all in Indiana, are defined below. The other five banking markets are defined in Appendix B.

[22] Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, 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).

[23] 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 200points. 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.

[24] The competitive effects of the proposal in these five markets are described in Appendix B.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Columbus, Fayette County, and Greensburg markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Columbus Market

Using initial screening data, First Financial is the largest depository organization in the Columbus market, controlling approximately $652.7 million in deposits, which represent approximately 27.0 percent of market deposits.[25] MainSource is the fourth largest depository organization in the Columbus market, controlling approximately $247.8 million in deposits, which represent approximately 10.2 percent of market deposits. On consummation, First Financial would remain the largest depository organization in the Columbus market, controlling approximately $900.5 million in market deposits, which would represent approximately 37.2 percent of market deposits. The HHI in this market would increase by 552 points, from 1465 to 2017.

To mitigate the potentially adverse competitive effects of the proposal in the Columbus market, First Financial has committed to divest three of MainSource Bank's nine branches in that market, which account for approximately $112.9 million in deposits, to a competitively suitable, in-market purchaser.[26] After the divestiture, First Financial would remain the largest depository organization in the market, controlling approximately $787.6 million in deposits, which would represent approximately 32.5 percent of market deposits.

In addition to the divestiture, the Board also 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 Columbus market.[27] Several factors indicate that the increase in concentration in the Columbus market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of one credit union in the Columbus market that 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 market.[28] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This

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[25] The Columbus market is defined as Bartholomew, Jennings, Jackson, and Brown counties, all in Indiana.

[26] As a condition of consummation of the proposal, First Financial has committed that it will execute, before consummating the proposal, an agreement to sell the three branches to one or more purchasers determined by the Board to be competitively suitable. First Financial also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Financial has committed that, if the proposed divestiture is not completed within the 180-day period, First Financial will transfer the unsold branches to an independent trustee, who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

[27] The number and strength of the 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).

[28] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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,*

weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the three MainSource Bank branches to an in-market competitor, and adjusting to reflect competition from the credit union, after consummation First Financial's market share would increase to 29.6 percent, and the market concentration level as measured by the HHI would increase by 231 points, from a level of 1295 to 1526. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the credit union, 14 other depository organizations would continue to serve the Columbus market, including two with market shares greater than 12 percent each.

Fayette County Market

Using initial screening data, First Financial is the second largest depository organization in the Fayette County market, controlling approximately $54.7 million in deposits, which represent approximately 19.7 percent of market deposits.[29] MainSource is the sixth largest depository organization in the Fayette County market, controlling approximately $21.0 million in deposits, which represent approximately 7.6 percent of market deposits. On consummation, First Financial would become the largest depository organization in the Fayette County market, controlling approximately $75.7 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 297 points, from 1704 to 2001.

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 Fayette County market. Several factors indicate that the increase in concentration in the Fayette County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Fayette County market that meet the Board's standard conditions for inclusion in its structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, adjusting to reflect competition from these two credit unions, the market concentration level in the Fayette County market, as measured by the HHI, would increase by 267 points from a level of 1547 to 1814, and First Financial's market share would increase from 19.7 percent to 25.8 percent. After consummation, the Fayette County market would continue to be served by seven other depository organizations, including the two credit unions noted above, including three which would each control more than 16 percent of market deposits.

Greensburg Market

Using initial screening data, First Financial is the fifth largest depository organization in the Greensburg market, controlling approximately $31.9 million in deposits, which represent approximately 5.8 percent of market deposits.[30] MainSource is the largest depository organization in the Greensburg market, controlling approximately $343.0 million in deposits, which represent approximately 62.6 percent of market deposits. On consumma-

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).

[29] The Fayette County market is defined as Fayette County, Indiana.

[30] The Greensburg market is defined as Decatur County, Indiana.

tion, First Financial would become the largest depository organization in the Greensburg market, controlling approximately $374.9 million in market deposits, which would represent approximately 68.5 percent of market deposits. The HHI in this market would increase by 729 points, from 4300 to 5029.

To mitigate the potentially adverse competitive effects of the proposal in the Greensburg market, First Financial has committed to divest one of MainSource Bank's two branches in the Greensburg market to a competitively suitable, out-of-market purchaser. The branch to be divested is slightly smaller than the only branch currently operated by First Financial in the Greensburg market.[31] After this divestiture, First Financial would become the largest depository organization in the market, controlling approximately $345.1 million in deposits, which would represent approximately 63 percent of market deposits. If the branch is sold to an out-of-market competitor, the structure of the Greensburg market would be approximately the same both before and after consummation of the proposal.[32]

In addition to the divestiture, the Board also 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 Greensburg market. Several factors indicate that the increase in concentration as measured by the above HHI, as well as First Financial's resulting market share, overstate the potential competitive effects of the proposal in the Greensburg market.

The Board has considered the competitive influence of one credit union in the Greensburg market that meets the Board's standard conditions for inclusion in the structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, taking into account the divestiture of the MainSource Bank branch to an out-of-market competitor, and adjusting to reflect competition from the credit union, the market concentration level in the Greensburg market as measured by the HHI would increase by 40 points, from a level of 3967 to 4007, and First Financial's share of market deposits resulting from the transaction would be 60.4 percent. Including the credit union and a new competitor entering the market through the divestiture, after consummation the Greensburg market would be served by five other depository organizations, including two with market shares greater than 10 percent each. The presence of these market competitors suggests that First Financial would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on First Financial in the Greensburg market.

Notwithstanding these circumstances, the Board views the competitive effects in this market as presenting a close case.

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, with the proposed divestitures of branches in the Columbus and Greensburg markets, would not likely have a significantly adverse effect on competition in the Columbus, Fayette County, and Greensburg markets or in any other relevant banking market. In addition, the appropriate banking

[31] First Financial Bank's only branch in the Greensburg market has $31.9 million in deposits, representing 5.6 percent of total market deposits. MainSource Bank has two branches with deposits in Greensburg, with $312.8 million and $29.8 million, respectively. First Financial proposes to divest the smaller of these branches, representing 5.2 percent of market deposits.

[32] The Board has previously approved two applications in which the post-divestiture HHI and the percentage of market deposits exceeded the post-divestiture effects in this case. *See Umpqua Holdings Corp.*, 100 *Federal Reserve Bulletin* 42 (2014); *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including First Financial's commitment to divest a total of four branches in the Columbus and Greensburg markets, 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 of the eight banking markets in which First Financial Bank and MainSource Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Consideration

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[33] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Financial and MainSource are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[34] The asset quality, earnings, and liquidity of both First Financial Bank and MainSource Bank are consistent with approval, and First Financial appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of First Financial, MainSource, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Financial; 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.

[33] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[34] As part of the proposed transaction, each share of MainSource common stock would be converted into the right to receive 1.3875 shares of First Financial common stock.

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

The Board also has considered First Financial's plans for implementing the proposal. First Financial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First Financial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Financial's management has the experience and resources to operate the combined organization in a safe and sound manner, and First Financial plans to integrate MainSource's existing management and personnel in a manner that augments First Financial's and First Financial Bank's management.[35]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[36] 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.[37] 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 the institutions' safe and sound operation,[38] 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.[39]

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

35 Following consummation of the proposed transaction, six MainSource directors will join First Financial's board of directors.

36 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

37 12 U.S.C. § 2901 *et seq*.

38 12 U.S.C. § 2901(b).

39 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of First Financial Bank and MainSource Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Cleveland ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by First Financial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[40] In this case, the Board considered the supervisory views of the Reserve Bank and the Office of the Comptroller of the Currency ("OCC") with respect to First Financial Bank and the Federal Deposit Insurance Corporation ("FDIC") with respect to MainSource Bank.[41]

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.[42] 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 ("HMDA"),[43] 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 ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[44] (4) the institution's community development lending, including the

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

41 Until its conversion on December 30, 2016, to a state member bank supervised by the Board, First Financial Bank was a national bank supervised by the OCC.

42 12 U.S.C. § 2906.

43 12 U.S.C. § 2801 *et seq*.

44 Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1million 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).

number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[45]

CRA Performance of First Financial Bank

First Financial Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of November 4, 2013 ("First Financial Bank Evaluation").[46] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[47]

Examiners found that First Financial Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity was good. Examiners also noted that the bank's geographic distribution of home mortgage loans and small loans to businesses was good. In addition, examiners found the bank's distribution of home mortgage loans by income level of the borrower to be good and the bank's distribution of loans to businesses with different revenue sizes to be adequate.

Examiners determined that First Financial Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that, in the state of Indiana, the bank's branches were reasonably accessible. Overall, examiners found that the community development services provided by the bank were adequate and that the bank provided a good level of services in Ohio.

CRA Performance of MainSource Bank

MainSource Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 29, 2014 ("MainSource Bank Evaluation").[48] The bank received "Low Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.[49]

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45 *See* 12 CFR 228.21 *et seq*.

46 The First Financial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1,2010, through December 31,2011. The evaluation period for community development loans, investments, and services was from June 1,2010, through December 31, 2011.

47 The First Financial Bank Evaluation included full-scope evaluations of the Cincinnati-Middleton Ohio-Kentucky-Indiana Multistate Metropolitan Statistical Area ("MSA"); Columbus, Indiana MSA; and the Ohio Non-MSA AA. Limited scope evaluations were performed of the Bloomington, Indiana MSA; Indianapolis, Indiana MSA; Gary, Indiana MSA; Lafayette, Indiana MSA; Indiana Non-MSA AA; Lima, Ohio MSA; and the Dayton, Ohio MSA.

48 The MainSource Bank Evaluation was conducted using Large Bank CRA Evaluation Procedures. Examiners reviewed HMDA, small business, and small farm loans originated from January 1,2012, through December 31,2013. The evaluation period for community development loans, investments, and services was from October 20, 2011, through September 29, 2014.

49 The MainSource Bank Evaluation included full-scope evaluations of the Louisville-Jefferson County, Kentucky-Indiana Multistate MSA; Cincinnati-Middletown, Ohio-Indiana-Kentucky Multistate MSA; State of Indiana Non-MSA AA; Kankakee-Bradley, Illinois MSA; Dayton, Ohio MSA; and the Kentucky Non-MSA AA. Limited-scope evaluations were performed of the Anderson, Indiana MSA; Bloomington, Indiana MSA; Columbus, Indiana MSA; Gary Metropolitan Division, Indiana AA; Indianapolis-Carmel, Indiana MSA; Danville, Illinois MSA; and the State of Illinois Non-MSA AA.

Examiners found that MainSource Bank's lending levels reflected good responsiveness to credit needs within its AAs and that a substantial majority of the bank's loans were made within its AAs. Examiners further found that the geographic distribution of MainSource Bank's loans reflected adequate penetration throughout its AAs. Examiners noted that the bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that MainSource Bank made a relatively high level of community development loans and originated qualifying community development loans in all of the bank's AAs. Further, the bank was found to use innovative and/or flexible lending practices in order to serve AA credit needs.

Examiners found that MainSource Bank made an adequate level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, although rarely in a leadership position. Examiners further noted that the bank exhibited adequate responsiveness to credit and community economic development needs, but that the bank rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that MainSource Bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that branch services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding its views of First Financial Bank's consumer compliance risk-management systems. The Board considered the most recent consumer compliance examination and fair lending review of First Financial Bank by the OCC. The Board also considered the most recent consumer compliance examination of MainSource Bank conducted by the FDIC.

The Board has taken this information, as well as the CRA performance records of First Financial Bank and MainSource Bank into account in evaluating the proposed transaction, including in considering whether First Financial has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm's AAs.

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. First Financial represents that it would provide a full range of deposit, savings, and other financial products and services to consumers and small- and medium-sized businesses in Ohio, Indiana, and Kentucky. First Financial states that it would continue offering all of the significant products and services currently offered by First Financial Bank and MainSource Bank after consummation of the proposal. Further, First Financial represents that, following the proposed transaction, the combined organization would be able to increase its lending limits and better meet the credit and banking needs of the small- and medium-sized businesses in its expanded service area.

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 Financial, and the 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 and the Bank Merger Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system."[50]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[51] 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.[52]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[53]

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

[50] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[51] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

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

activities.[54] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

First Financial Bank has applied under section 9 of the FRA to establish and operate branches at the current main office and branches of MainSource Bank.[55] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Financial 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.[56] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Election

As noted, First Financial has elected to become a financial holding company in connection with the proposal. First Financial has certified that, upon consummation of the proposal, First Financial and First Financial Bank would be well capitalized and well managed, and First Financial has provided all of the information required under the Board's Regulation Y.[57] Based on all the facts of record, the Board determines that First Financial's election will become effective upon consummation of the proposal if, on that date, First Financial is well capitalized and well managed and all depository institutions it controls are well capitalized and well managed and have CRA ratings of at least "Satisfactory."

Conclusion

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

[54] First Financial Bank and MainSource Bank offer a broad range of retail and commercial banking products and services. First Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[55] *See* 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, First Financial Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4; Ind. Code § 28-2-13-19; Ky. Rev. Stat. Ann. 286.3-920; Ohio Rev. Code Ann. §1117.01.

[56] 12 U.S.C.§ 322; 12 CFR 208.6. Upon consummation of the proposal, First Financial Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

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

the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Financial 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. 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors,\ effective February 22, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to be Established by First Financial Bank

Illinois Branches
1. 101 North Hilgert Drive, Grant Park, Illinois 60940
2. 323 East Main Street, Hoopeston, Illinois 60942
3. 2000 West Court Street, Kankakee, Illinois 60901
4. 216 South Fourth Street, Watseka, Illinois 60970

Indiana Branches
1. 202 North Harrison Street, Alexandria, Indiana 46001
2. 1802 Allison Lane, Jeffersonville, Indiana 47130
3. 104 East Link's Way, Aurora, Indiana 47001
4. 136 East Harriman, Bargersville, Indiana 46106
5. 1053 State Road 229 North, Batesville, Indiana 47006
6. 3205 East Third Street, Bloomington, Indiana 47401
7. 24004 Stateline Road, Lawrenceburg, Indiana 47025
8. 9014 State Road 101, Brookville, Indiana 47012
9. 1051 West Spring Street, Brownstown, Indiana 47220
10. 221 East Main Street, Crawfordsville, Indiana 47933
11. 8740 South Emerson Avenue, Indianapolis, Indiana 46237
12. 597 Banta Street, Franklin, Indiana 46131
13. 6671 Highway 150, Floyds Knobs, Indiana 47119
14. 7700 State Road 64, Georgetown, Indiana 47122
15. 3610 Grant Line Road, New Albany, Indiana 47150
16. 122 West Washington Street, Greensburg, Indiana 47240
17. 102 West Main Street, Hagerstown, Indiana 47346
18. 136 Thornton Road, Hanover, Indiana 47243
19. 555 East Third Street, Hobart, Indiana 46342
20. 8475 North State Road 9, Hope, Indiana 47246
21. 3535 East 96th Street, Indianapolis, Indiana 46240
22. 120 East Main Street, Knightstown, Indiana 46148
23. 2253 State Road 54 East, Linton, Indiana 47441
24. 201 South Main Street, Lynn, Indiana 47355

25. 1315 Clifty Drive, Madison, Indiana 47250
26. 417 Jefferson Street, Madison, Indiana 47250
27. 201 North Broadway, Greensburg, Indiana 47240
28. 11 South Meridian, Ste 101, Indianapolis, Indiana 46204
29. 100 East Spring Street, New Albany, Indiana 47150
30. 600 South Memorial Drive, New Castle, Indiana 47362
31. 501 Clifty Drive, Madison, Indiana 47250
32. 521 North State Street, North Vernon, Indiana 47265
33. 112 North Meridian Street, Portland, Indiana 47371
34. 3433 East Main Street, Richmond, Indiana 47374
35. 230 Main Street, Rising Sun, Indiana 47040
36. 202 North Main Street, Rushville, Indiana 46173
37. 1130 East Tipton Street, Seymour, Indiana 47274
38. 28287 State Route 1, West Harrison, Indiana 47060
39. 3880 West Presidential Way, Edinburgh, Indiana 46124
40. 1012 South Adams Street, Versailles, Indiana 47042
41. 102 West Main Street, Vevay, Indiana 47043
42. 1263 North Indiana 135, Greenwood, Indiana 46142
43. 120 North Monroe Street, Williamsport, Indiana 47993

Kentucky Branches
1. 1905 Blankenbaker Parkway, Louisville, Kentucky 40299
2. 9819 Brownsboro Road, Louisville, Kentucky 40241
3. 6512 Bardstown Road, Louisville, Kentucky 40291
4. 2862 Frankfort Avenue, Louisville, Kentucky 40206
5. 201 Limestone Drive, Frankfort, Kentucky 40601
6. 104 South Chiles Street, Harrodsburg, Kentucky 40330
7. 1012 Bypass North, Lawrenceburg, Kentucky 40342
8. 293 North Hubbards Lane, Louisville, Kentucky 40207
9. 293 North Hubbards Lane, Louisville, Kentucky 40207
10. 13704 Shelbyville Road, Louisville, Kentucky 40245
11. 1734 Midland Trail, Shelbyville, Kentucky 40065
12. 2735 Bardstown Road, Louisville, Kentucky 40205
13. 9306 Taylorsville Road, Louisville, Kentucky 40299
14. 211 West Oak Street, Louisville, Kentucky 40203
15. 295 North Hubbards Lane, Louisville, Kentucky 40207

Ohio Branches
1. 7637 Beechmont Avenue, Cincinnati, Ohio 45255
2. 3723 Glenmore Avenue, Cincinnati, Ohio 45211
3. Summit Woods 1, 100 East Business Way, Suite 150, Cincinnati, Ohio 45241
4. 585 Anderson Ferry Road, Cincinnati, Ohio 45238
5. 6300 Harrison Avenue, Cincinnati, Ohio 45247
6. 10425 Harrison Avenue, Harrison, Ohio 45030
7. 3442 Edwards Road, Cincinnati, Ohio 45208
8. 5550 Cheviot Road, Cincinnati, Ohio 45239
9. 2000 Madison Road, Cincinnati, Ohio 45208
10. 7615 Reading Road, Cincinnati, Ohio 45237
11. 11186 Reading Road, Cincinnati, Ohio 45241
12. 635 South Market Street, Troy, Ohio 45373
13. 1580 West Main Street, Troy, Ohio 45373
14. 101 East Elm Street, Union City, Ohio 45390
15. 5791 Glenway Avenue, Cincinnati, Ohio 45238

Appendix B

First Financial/MainSource 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
Bloomington, Indiana – includes Greene, Monroe, and Lawrence counties.						
First Financial Pre-Consummation	3	$317.3M	10.04			
MainSource	9	$137.0M	4.33			
First Financial Post-Consummation	3	$454.3M	14.37	1499	87	15
Gary/Hammond, Indiana – includes Lake, Porter, La Porte, Newton, Jasper counties; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County.						
First Financial Pre-Consummation	9	$702.5M	4.81			
MainSource	16	$134.2M	0.92			
First Financial Post-Consummation	8	$836.7M	5.73	1003	8	29
Indianapolis, Indiana – includes Boone, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Morgan, Owen, Putnam, Rush, Shelby, and Tipton counties.						
First Financial Pre-Consummation	14	$620.0M	1.32			
MainSource	18	$452.7M	0.91			
First Financial Post-Consummation	12	$1.05B	2.23	1125	2	48
Cincinnati, Ohio – includes Brown, Butler, Clermont, Hamilton, and Warren counties, Ohio; Dearborn County, Indiana; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky; and the New Liberty and Owenton census county divisions in Owen County, Kentucky.						
First Financial Pre-Consummation	6	$2.24B	2.03			
MainSource	11	$568.5M	0.52			
First Financial Post-Consummation	4	$2.80B	2.54	3426	2	63
Dayton, Ohio – includes Montgomery, Miami, Greene, and Preble counties.						
First Financial Pre-Consummation	7	$370.3M	3.13			
MainSource	11	$144.3M	1.22			
First Financial Post-Consummation	7	$514.7M	4.35	1534	8	28

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Orders Issued Under Federal Reserve Act

IBERIABANK
Lafayette, Louisiana

Order Approving the Merger of Depository Institutions and Establishment of Branches
FRB Order No. 18-06 (February 21, 2018)

IBERIABANK, the state member bank subsidiary of IBERIABANK Corporation ("IBKC"),[1] both of Lafayette, Louisiana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[2] to merge with Gibraltar Private Bank & Trust Company ("Gibraltar"), Coral Gables, Florida, a federal savings bank, with IBERIABANK as the surviving entity. IBERIABANK also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of Gibraltar's main office and branches.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation. 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 the Bank Merger Act and the FRA.

IBKC, with consolidated assets of approximately $28.0 billion, is the 65th largest insured depository organization in the United States, controlling deposits of approximately $21.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] IBKC controls IBERIABANK, which has offices in eight states. IBKC is the 14th largest insured depository organization in Florida, with approximately $8.7 billion in deposits, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state.[6]

Gibraltar, with consolidated assets of approximately $1.6 billion, is the 476th largest insured depository organization in the United States, controlling deposits of approximately $1.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Gibraltar has offices in Florida and New York. Gibraltar is the 49th largest insured depository institution in Florida, with approximately $1.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in Florida. Gibraltar is the 173rd largest insured depository institution in New York, with approximately $79.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in New York.

On consummation of the proposal, IBKC would become the 64th largest depository organization in the United States, with consolidated assets of approximately $29.6 billion. IBKC would control approximately $22.4 billion in deposits, representing less than

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1 IBKC is a financial holding company within the meaning of the Bank Holding Company Act of 1956.

2 12 U.S.C. § 1828(c).

3 12 U.S.C. § 321. These locations are listed in the Appendix.

4 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

5 Asset and nationwide deposit-ranking data are as of September 30, 2017, unless otherwise noted. In this context, insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

6 State deposit-ranking data are as of June 30, 2017, unless otherwise noted.

1 percent of the total deposits of insured depository institutions in the United States. IBKC would continue to operate the 14th largest insured depository institution in Florida, controlling deposits of approximately $9.7 billion, representing approximately 1.7 percent of the total deposits of insured depository institutions in the state. IBKC would operate the 173rd largest insured depository institution in New York, controlling deposits of approximately $79.2 million, representing less than 1 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

The Bank Merger Act generally provides that the Board may not approve an application by one insured depository institution to acquire another insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[7] For purposes of the Bank Merger Act, the home state of IBERIABANK is Louisiana and the home state of Gibraltar is Florida.[8] Consummation of the proposal would result in IBERIABANK controlling less than 1 percent of the deposits of insured depository institutions in the United States. The proposed acquisition of Gibraltar would not be prohibited by the law of any state in which Gibraltar is located.[9] Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under the interstate merger provisions of the Bank Merger Act.

Competitive Considerations

The Bank Merger 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.[10] 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 effect of the transaction in meeting the convenience and needs of communities to be served.[11]

IBERIABANK and Gibraltar compete directly in the Miami-Fort Lauderdale and Naples, Florida banking markets.[12] The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in each market; the relative shares of total deposits in insured depository institutions in the markets ("market

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7 12 U.S.C. § 1828(c)(13).

8 A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §1828(c)(13)(C)(ii)(II). A federal savings association's home state is the state in which the home office of the savings association is located. 12U.S.C.§1828(c)(13)(C)(ii)(III).

9 Florida law permits an out-of-state bank to acquire a Florida bank through an interstate merger provided the resulting bank would not control 30 percent or more of the total amount of deposits held by all insured depository institutions in Florida. *See* Fla. Stat. Ann. § 658.2953. On consummation, IBERIABANK would control less than 30percent of the total deposits of insured depository institutions in Florida. New York does not have a deposit cap applicable to this proposal.

10 12 U.S.C. § 1828(c)(5)(A).

11 12 U.S.C. § 1828(c)(5)(B).

12 The Miami-Fort Lauderdale banking market includes Broward and Miami-Dade counties, and the Naples banking market consists of Collier County, all in Florida.

deposits") that IBERIABANK would control;[13] 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");[14] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for these markets. On consummation of the proposal, both the Miami-Fort Lauderdale and Naples, Florida banking markets would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in each market would be minimal, and numerous competitors would remain in each market.[15]

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 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 Miami-Fort Lauderdale and Naples banking markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] In its evalua-

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[13] Local deposit and market share figures are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of 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* 53 (1991).

[14] 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 1800and the merger increases the HHI by more than 200points. Although the DOJ and the Federal Trade Commission have 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.

[15] In the Miami-Fort Lauderdale banking market, IBKC operates the 13th largest depository institution, controlling approximately $3.2 billion in deposits, which represent approximately 1.8 percent of market deposits. Gibraltar is the 39th largest depository institution in the same market, controlling approximately $412.2million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would become the 12th largest depository organization in the market, controlling deposits of approximately $4.0 billion, which represent approximately 2.2 percent of market deposits. The HHI for the Miami-Fort Lauderdale banking market would decrease by 2 points to 793, and 78 competitors would remain in the market.

In the Naples banking market, IBKC operates the 5th largest depository institution, controlling approximately $991.8 million in deposits, which represent approximately 5.9 percent of market deposits. Gibraltar is the 33rd largest depository institution in the market, controlling approximately $21.8 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBKC would remain the 5th largest depository organization in the market, controlling deposits of approximately $1.0 billion, which represent approximately 6.2 percent of market deposits. The HHI for the Naples banking market would increase by 1 point to 957, and 35 competitors would remain in the market.

[16] 12 U.S.C.§1828(c)(5).

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

IBERIABANK and Gibraltar are well capitalized, and IBERIABANK would remain so on consummation of the proposed transaction. The proposal is a merger structured as a stock conversion.[17] The asset quality, earnings, and liquidity of IBERIABANK and Gibraltar are consistent with approval. IBERIABANK appears to have adequate resources to absorb the costs of the proposal and to integrate Gibraltar's operations. In addition, the future prospects of IBERIABANK are considered consistent with approval.

The Board also has considered the managerial resources of the institutions involved and of IBERIABANK after consummation of the proposal. The Board has reviewed the examination records of IBKC, IBERIABANK, and Gibraltar, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by IBERIABANK; the Board's supervisory experiences and those of other relevant bank supervisory agencies with IBERIABANK and Gibraltar; and the organizations' record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

IBERIABANK and Gibraltar are considered to be well managed. IBERIABANK's board of directors and senior management have substantial knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal.

The Board has also considered IBERIABANK's plans for implementing the proposal. IBERIABANK has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. IBERIABANK would apply its risk-management policies, procedures, and controls at the combined organization and these are considered acceptable from a supervisory perspective. In addition, IBERIABANK's management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal.

Based on all the facts of record, including IBERIABANK'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, as well as the records of effectiveness of the organizations in combatting money-laundering activities, are consistent with approval.

[17] At the effective time of the merger, each share of Gibraltar common stock would convert into a right to receive shares of IBKC common stock.

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.[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 these communities, 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").[19] 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 the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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 following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of IBERIABANK and Gibraltar, the compliance records of both banks, the supervisory views of the Federal Reserve Bank of Atlanta ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by IBERIABANK, and the public comment received on the proposal.

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal, expressing fair lending and convenience and needs concerns with respect to IBERIABANK.[22] The commenter alleged that IBERIABANK's current branching activities in African American communities and the bank's marketing of products and services to African American businesses and professionals are limited. Specifically, the commenter asserted that IBERIABANK has avoided placing branches in proximity to densely populated African American neighborhoods.[23] In

[18] 12 U.S.C. § 1828(c)(5).

[19] 12 U.S.C. § 2901 *et seq*.

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

[22] The commenter also alleged that IBERIABANK has engaged in discriminatory employment practices. A bank's internal employment practices, however, are outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the Bank Merger Act.

[23] For example, the commenter alleged that IBERIABANK has established no branches in the African American communities of South Atlanta, in Georgia, and South Dallas and South Houston, in Texas. In addition, the commenter contends that only seven of IBERIABANK's branches are located in low-income neighborhoods and that five of these branches appear to engage in limited deposit-taking activities, which the commenter alleges indicates minimal activity and commitment in these communities.

addition, the commenter alleged that IBERIABANK does not have an organized outreach program for developing commercial lending relationships with African American businesses and professionals.[24] Based on these alleged practices, the commenter expressed concern that IBERIABANK will not meet the needs of disadvantaged African American communities in South Florida if the proposal is approved.

Business of the Involved Institutions and Response to the Public Comment

Through its network of branches in seven states,[25] IBERIABANK offers a range of retail and commercial products and services to individual customers and businesses, including checking, savings, money market, and certificate of deposit accounts; consumer, residential, commercial, construction, and auto loans; wealth management services; credit card and merchant card services; and treasury management services.

Gibraltar provides private comprehensive wealth management and private banking services to individuals and families, businesses, foundations, and nonprofit organizations. Gibraltar also offers commercial, commercial real estate, construction and land development, and consumer loans.

In response to the commenter's allegations, IBERIABANK states that it has an extensive legacy of meeting the needs of all communities in its footprint, including LMI communities, and highlights a community development plan the bank entered into with the National Community Reinvestment Coalition that became effective on January 1, 2018 ("CRA Plan").

With respect to the commenter's allegations about IBERIABANK's branch locations, the bank notes that as part of its most recent CRA performance evaluation, Reserve Bank examiners found the bank's retail delivery systems to be reasonably accessible to the bank's geographies and to individuals of different income levels in its assessment areas ("AAs"). The bank asserts that it is committed to maintaining this accessibility for individuals of different income levels throughout the communities it serves. IBERIABANK represents that it currently operates 47 active, full-service branches in LMI census tracts, representing approximately 22.6 percent of all of IBERIABANK's full-service branches, and that, as part of its CRA Plan, it has agreed to open two new bank branches in LMI census tracts, one in Miami-Dade County, Florida, and one in Atlanta, Georgia.

In response to the commenter's criticism that IBERIABANK has no organized outreach program to African American businesses and professionals, IBERIABANK asserts that it does not develop or target products or services specifically based on race or ethnicity because it does not assume all borrowers of a particular race or ethnicity have the same credit needs. IBERIABANK represents that it recognizes the credit challenges faced by LMI communities and has developed initiatives designed to meet the credit needs of such communities, including through community development loans, CRA-qualified investments, and affordable financial product offerings to improve banking access for underserved communities. IBERIABANK asserts that, among other programs designed specifically to meet the needs of LMI communities, it has created the IBERIABANK Subsidy

[24] The commenter alleged that IBERIABANK only finances African American businesses and professionals that come into the bank's offices, rather than actively soliciting business from them in their communities, in markets such as Atlanta, Dallas, and Houston, where there are a large number of creditworthy African American businesses.

[25] IBERIABANK has branch locations in Louisiana, Florida, Arkansas, Alabama, Texas, Tennessee, and Georgia. IBERIABANK does not operate any full-service branches in South Carolina, but has one limited service administrative office in that state, which does not accept deposits or make loans. In addition, IBERIABANK has recently been approved to establish a branch in North Carolina.

Program to provide $4,000 in down-payment and closing-cost assistance for the purchase or refinancing of loans for LMI borrowers. The bank also offers an unsecured home improvement loan designed to assist homeowners who lack equity, invests in Low-Income Housing Tax Credit projects that provide affordable rental housing, and provides grants and donations to community development organizations engaged in community services for LMI individuals and communities. IBERIABANK further represents that the bank will provide support to LMI communities in those states where it currently has a branch presence consistent with its CRA 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 institution, as well as information and views provided by the appropriate federal supervisors.[26] In this case, the Board considered the supervisory views of the Reserve Bank and the OCC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[27] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution, such as IBERIABANK, 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 under the Home Mortgage Disclosure Act ("HMDA"),[28] in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including the number and amounts of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[29] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit

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

27 12 U.S.C. § 2906.

28 12 U.S.C. § 2801 *et seq*.

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

needs of LMI individuals and geographies.[30] Large institutions are also subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[31]

CRA Performance of IBERIABANK

IBERIABANK was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of August 5, 2013 ("IBERIABANK Evaluation").[32] IBERIABANK received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[33]

Examiners found IBERIABANK's overall lending performance to be good in Alabama, Arkansas, Louisiana, and Texas and adequate in Florida and Tennessee. Examiners found that IBERIABANK originated a substantial majority of its loans within its AAs, reflecting excellent AA penetration. Examiners found that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was adequate. Examiners noted that the overall distribution of small business lending reflected adequate penetration in LMI geographies and among small businesses (businesses with revenues of $1 million or less). Examiners further noted that the bank made a high level of community development loans during the review period. The community development loans were for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by financing small businesses that resulted in job creation and/or retention, revitalizing and/or stabilizing targeted LMI census tracts or other qualified geographies, and community services targeted to LMI individuals.

In the Houston AA, an area of concern to the commenter, examiners considered IBERIABANK's lending performance to be good. The geographic distribution of small business loans was found to reflect good penetration throughout the AA, and examiners noted that the bank's small business lending in low-income census tracts was excellent.

Examiners found IBERIABANK's investment performance to be excellent in Louisiana, good in Alabama, Arkansas, and Texas, and adequate in Florida and Tennessee. Examiners noted that IBERIABANK had made substantial qualified investments and provided

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[30] *See* 12 CFR 228.22(b).

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

[32] The IBERIABANK Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and small business loans for the period January 1, 2011, through December 31, 2012. The evaluation period for community development loans and investments was January 1, 2011, through March 31, 2013. Due to IBERIABANK's significant expansion and growth during the review period, the bank's performance in 2012 was weighted slightly more than its performance in 2011 in determining the final rating for lending.

[33] The IBERIABANK Evaluation included a full-scope review in the New Orleans-Metairie-Kenner MSA; Lafayette MSA; Little Rock-North Little Rock-Conway MSA; Fayetteville-Springdale-Rogers MSA; North Port-Bradenton-Sarasota MSA; Naples-Marco Island MSA; Birmingham-Hoover MSA; Houston-Sugar Land-Baytown MSA; and Memphis-Forest City Combined Statistical Area. A limited-scope review was performed in Baldwin County, Alabama; Huntsville MSA; Mobile MSA; MontgomeryMSA; Jonesboro MSA; Northeast Arkansas; Palm Beach-Broward MSA; Ft. Myers MSA; Florida Keys, Florida; Acadiana, Louisiana; Allen, Louisiana; Baton Rouge MSA; Houma MSA; Lake Charles MSA; Lincoln, Louisiana; Monroe MSA; Morehouse, Louisiana; and Shreveport MSA.

The IBERIABANK Evaluation did not include a review of Dallas or Atlanta, areas of concern to the commenter, because IBERIABANK did not enter the Dallas market until completion of its acquisition of First Private Bank or the Atlanta market until completion of its acquisition of Georgia Commerce Bancshares Inc., both in 2015.

significant financial support to address the needs for affordable housing, financial counseling, emergency assistance, job training, and the revitalization of LMI communities.

Examiners highlighted the bank's provision of an excellent level of community development services throughout its AAs. Examiners found the bank's retail delivery systems to be reasonably accessible to geographies and individuals of different income levels and that the bank's record of opening and closing branches had not adversely affected the accessibility of delivery systems, particularly in LMI geographies and to LMI individuals. Examiners noted that the bank offered several retail products designed to meet the financial needs of lower-income customers and small businesses and that the bank participated in organized programs and other outreach efforts to expand banking access to LMI customers across its entire banking footprint. During the examination review period, the bank and its employees provided over 10,000 hours of community development services through service activities aimed at promoting or facilitating affordable housing for LMI individuals, economic development, and the revitalization of LMI areas.

In the Houston AA, an area of concern to the commenter, IBERIABANK's performance was found to be adequate. Examiners observed that the bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels, including LMI geographies and individuals. Examiners also noted that IBERIABANK provided a relatively high level of community development services that benefited residents of, and small businesses in, the Houston AA. During the review period, the bank and its employees provided almost 500 hours of community development services, including providing financial education, homeownership counseling, and small business assistance, as well as working with a variety of organizations that provided community services in LMI geographies and for LMI individuals.

IBERIABANK's Efforts since the IBERIABANK Evaluation

IBERIABANK represents that, since the IBERIABANK Evaluation, it has continued to build upon its commitment to provide financial services to LMI individuals, within LMI geographies, to small businesses, and to underserved communities. IBERIABANK also represents that it has opened eight bank branches in LMI communities since the IBERIABANK Evaluation, including one in Dallas and one in Houston, and that it has committed to open two new bank branches in LMI census tracts, including one in Miami-Dade County and one in Atlanta.

IBERIABANK asserts that it has continued to make a high level of community development loans throughout its AAs to increase affordable housing, revitalize LMI geographies, and promote economic development through financing small businesses in LMI communities. IBERIABANK represents that since the IBERIABANK Evaluation it has originated community development loans to support nonprofit organizations involved in affordable housing and economic activities that benefit LMI individuals and communities in Atlanta, has maintained its high level of community development lending in Houston, and has partnered with the Dallas Habitat for Humanity to provide affordable mortgage loans to its clientele and extended a line of credit to the nonprofit organization LiftFund for its minority-owned small business loan fund that targets businesses in the Dallas market.

IBERIABANK also represents that it made an equity investment in Liberty Financial Services, the holding company of Liberty Bank, an African-American owned financial institution. In addition, the bank has offered a suite of products and services to address the financial needs of LMI borrowers, including mortgage loan products and low-cost individual development accounts.

As noted, as part of its CRA Plan, the bank has agreed to commitments and goals designed to meet the needs of underserved communities in the states in which the bank currently has a branch presence. Such commitments and goals relate to mortgage and small business lending, community development lending and investments, philanthropy, and increasing access to financial services in LMI communities. IBERIABANK represents that it has committed to increase its small business lending in LMI census tracts by 5 percent annually for the first three years and by 2.5 percent annually for the last two years of the plan. IBERIABANK also represents that it has committed to increase home mortgage lending to LMI borrowers and LMI geographies by 3 percent annually over five years.

CRA Performance of Gibraltar

Gibraltar was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of July 11, 2016 ("Gibraltar Evaluation").[34] Gibraltar received "Outstanding" ratings for the Lending Test and Investment Test and a "High Satisfactory" rating for the Service Test.[35] Although Gibraltar's overall rating took into consideration the bank's performance in each AA that received a full-scope review, examiners gave the greatest weight to the bank's record in the Miami-Dade-Broward AA due to the higher volume of deposits and loans in that area.

Examiners found that Gibraltar demonstrated excellent responsiveness to the credit needs of its AAs. Examiners noted that, overall, Gibraltar originated a substantial majority of its loans within its AAs. Examiners found that the bank had good distribution among borrowers of different income levels and that the geographic distribution of loans reflected good penetration. Examiners also determined that the bank made an excellent level of community development loans.

Examiners found that the bank's community development investments were responsive to the credit needs of its AAs in the state of Florida, primarily addressing the need for rehabilitation of affordable housing for LMI individuals. Examiners observed that the bank's retail delivery systems were adequately distributed throughout the bank's AAs. Moreover, branches were found to be reasonably accessible to geographies and individuals of different income levels in Florida.[36]

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination of IBERIABANK conducted by Reserve Bank examiners, which included a review of the

[34] The Gibraltar Evaluation was conducted using Large Bank CRA Examination Procedures. The examiners reviewed residential mortgage and small business loans from January 1, 2013, through December 31, 2015. The evaluation period for community development loans and services was January 1, 2013, through December 31, 2015. The evaluation period for community development investments was August 1, 2013, through February 29, 2016.

[35] The Gibraltar Evaluation included a full-scope evaluation of the Miami-Dade-Broward AA and the New York-Northern New Jersey-Long Island, New York-New Jersey-Pennsylvania MSA ("NY-NJ-PA MSA"). The Miami-Dade-Broward AA is composed of the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida Metropolitan Division ("MD"), and the Miami-Miami Beach-Kendall, Florida MD. A limited-scope review was performed in the Collier County, Florida MSA, and Monroe County, Florida Non-MSA. The ratings in the State of Florida were based on the bank's performance in the Miami-Dade-Broward AA.

[36] None of Gibraltar's Florida branches is located in a LMI geography. Although two Florida branches are in reasonable proximity to LMI geographies, ease of access is limited due to their location within commercial office towers. However, Gibraltar offers electronic banking services that include no-charge automated teller machine ("ATM") access when using Publix Supermarket's PRESTO ATM network, online banking, and mobile banking. Gibraltar's New York branch is located in proximity to LMI geographies, but primarily provides wealth management services. However, Gibraltar offers electronic banking services in New York, including through ATM networks, online banking, and mobile banking.

bank's consumer compliance risk-management program. The Board has considered the preliminary results of a pending review of IBERIABANK's compliance with the Fair Housing Act ("FHA"),[37] which included a redlining analysis, and the results of a previous review of IBERIABANK's compliance with the FHA. The Board also considered the preliminary results of a new CRA evaluation of IBERIABANK and considered IBERIABANK's supervisory record with the Consumer Financial Protection Bureau. Moreover, the Board has considered the results of the most recent consumer compliance examination of Gibraltar conducted by the OCC, which included a review of the bank's consumer compliance program and compliance with certain consumer protection laws and regulations.

The Board has taken this information, as well as the CRA performance records of both banks, into account in evaluating the proposal, including in considering whether IBERIABANK has the experience and resources to ensure that it helps to meet the credit needs of the communities within its AAs.

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. IBERIABANK represents that, following consummation of the proposal, existing customers of IBERIABANK and legacy customers of Gibraltar would benefit from an expanded branch and ATM network, expanded commercial loan capacity, and a broader range of financial products and services. IBERIABANK also represents that it does not expect to discontinue any material products or services currently provided by Gibraltar.

Conclusions 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 consumer protection laws, supervisory views of the Reserve Bank and the OCC, confidential supervisory information, information provided by IBERIABANK, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") added "risk to the stability of the United States banking or financial system" as a factor that must be considered under the Bank Merger Act.[38]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the

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[37] 42 U.S.C. § 3601 *et seq*.
[38] Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), amending 12 U.S.C. § 1828(c)(5).

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]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[41]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in assets and a pro forma organization of less than $100 billion in assets. As noted, the acquirer is predominately engaged in a variety of consumer and commercial banking activities, and the target engages in private wealth management and commercial and consumer loan activities. The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Establishment of Branches

As noted, IBERIABANK has applied under section 9 of the FRA to establish branches at the current locations of Gibraltar.[42] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered IBERIABANK's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and invest-

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

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

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

[42] *See* 12 U.S.C.§ 321. Under section 9 of the FRA, a state member bank may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §36(b)(2) and (c). In addition, section 341 of the Dodd-Frank Act provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming a bank. Dodd-Frank Act §341, Pub. L. No. 111-203, 124 Stat. 1376, 1540-41 (2010)), codified at 12 U.S.C. §5451. Upon consummation, IBERIABANK's branches would be permissible under applicable state law. *See* Fla. Stat. Ann. § 658.2953 and N.Y. Banking Law Article 5-C, §§ 223 and 225.

ment in bank premises.[43] 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 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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by IBERIABANK 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. 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective February 21, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix

Branches to be Established by IBERIABANK

Florida Branches

450 East Las Olas Boulevard, Suite 1220
Fort Lauderdale, Florida

5551 Ridgewood Drive, Suite 100
Naples, Florida

200 South Biscayne Boulevard, Suite 2850
Miami, Florida

1575 San Ignacio Avenue
Coral Gables, Florida

55 Alhambra Plaza, 8th Floor
Coral Gables, Florida

400 Arthur Godfrey Road, Suite 102
Miami Beach, Florida

[43] 12 U.S.C. §§ 321 and 322; 12 CFR 208.6. In addition, upon consummation of the proposal, IBERIABANK's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

35 Ocean Reef Drive, Suite 100
Key Largo, Florida

New York Branch

280 Park Avenue, 29th Floor
New York, New York

First Financial Bancorp
Cincinnati, Ohio

First Financial Bank
Cincinnati, Ohio

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches, and Determination on a Financial Holding Company Election
FRB Order No. 2018-07 (February 22, 2018)

First Financial Bancorp ("First Financial"), Cincinnati, Ohio, 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 merge with MainSource Financial Group, Inc. ("MainSource"), and thereby indirectly acquire MainSource Bank, both of Greensburg, Indiana.

In addition, First Financial's subsidiary state member bank, First Financial Bank, Cincinnati, Ohio, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with MainSource Bank, with First Financial Bank as the surviving entity.[3] First Financial Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of MainSource Bank.[4]

In connection with this proposal, First Financial also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (*l*) of the BHC Act and section 225.82 of the Board's Regulation Y.[5]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *FederalRegister* 195 (October 11, 2017)).[6] The time for submitting comments has expired, and no comments were received. The Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger of First Financial Bank and MainSource Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

First Financial, with consolidated assets of approximately $8.8 billion, is the 149th largest insured depository organization in the United States. First Financial controls approximately $6.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] First Financial controls First Financial Bank, which operates in Indiana, Kentucky, and Ohio. First Financial is the 14th largest insured depository organization in Indiana, controlling deposits of approximately $2.8 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state. First Financial is the 71st largest insured depository organization in Kentucky, controlling deposits of approximately $187.7 million,

1 12 U.S.C. § 1841 *etseq.*
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in Appendix A.
5 12 U.S.C. § 1843(k) and (*l*); 12 CFR 225.82.
6 12 CFR 262.3(b).
7 Nationwide asset and deposit data are as of September 30, 2017, unless otherwise noted.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8] First Financial is the 11th largest insured depository organization in Ohio, controlling deposits of approximately $3.6 billion, which represent 1.1 percent of the total deposits of insured depository institutions in that state.

MainSource, with consolidated assets of approximately $4.6 billion, is the 218th largest insured depository organization in the United States. MainSource controls approximately $3.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MainSource controls MainSource Bank, which operates in Illinois, Indiana, Kentucky, and Ohio. MainSource is the 233rd largest insured depository organization in Illinois, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 17th largest insured depository organization in Indiana, controlling deposits of approximately $2.3 billion, which represent 1.8 percent of the total deposits of insured depository institutions in that state. MainSource is the 31st largest insured depository organization in Kentucky, controlling deposits of approximately $486.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MainSource is the 41st largest insured depository organization in Ohio, controlling deposits of approximately $613.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Financial would have consolidated assets of approximately $13.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States.[9] First Financial would control total deposits of approximately $10.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, First Financial would become the 233rd largest insured depository organization, controlling deposits of approximately $146.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Indiana, First Financial would become the 6th largest insured depository organization, controlling deposits of approximately $5.1 billion, which represent 4.1 percent of the total deposits of insured depository institutions in that state. In Kentucky, First Financial would become the 24th largest insured depository organization, controlling deposits of approximately $674.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Ohio, First Financial would remain the 11th largest insured depository organization, controlling deposits of approximately $4.2 billion, which represent approximately 1.2 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.[10] Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited

8 State deposit data are as of June 30, 2017, unless otherwise noted.

9 Excluding purchase accounting adjustments, First Financial would become the 109th largest insured depository institution in the United States, with consolidated assets of approximately $13.4 billion.

10 12 U.S.C. § 1842(d)(1)(A).

under state law.[11] The Board may not approve an application that would permit an out-of-state bank holding company or bank 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.[12] In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

For purposes of the BHC Act, the home state of First Financial is Ohio, and MainSource Bank is located in Illinois, Indiana, Kentucky, and Ohio.[14] For purposes of section 44 of the FDI Act, the home state of First Financial Bank is Ohio, and the home state of MainSource Bank is Indiana. First Financial and First Financial Bank are well capitalized and well managed under applicable law, and First Financial Bank has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA").[15] Neither Indiana nor Kentucky has statutory minimum age requirements,[16] and MainSource Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Kentucky imposes a 15 percent limit on the total amount of in-state deposits that a single banking organization may control.[17] Ohio imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[18] The combined organization would control approximately 4.1 percent of the total amount of deposits of insured depository institutions in Indiana, approximately 0.9 percent of the total amount of deposits of insured depository institutions in Kentucky, and approximately 1.2 percent of the total amount of deposits of insured depository institutions in Ohio, the only states in which First Financial and MainSource have overlapping banking operations. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including First Financial Bank'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 both statutes.

[11] 12 U.S.C. § 1831u(a)(1).

[12] 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

[13] 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See*12U.S.C.§1841(o)(4)–(7).

[14] *See* 12 U.S.C. §§ 1831u(g)(4) and 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

[15] 12 U.S.C. § 2901 *etseq.*

[16] *See* Ind. Code § 28-2-17; Ky. Rev. Stat. Ann. 286.3-900. Illinois has a statutory minimum age requirement, but it only applies to the acquisition of a bank that is organized under the laws of that state. *See* 205 Ill. Comp. Stat. 5/21.2. This age requirement is not applicable to the proposed transaction because MainSource Bank is organized under the laws of Indiana.

[17] Ky. Rev. Stat. Ann. § 286.3-900(2), -920(4). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[18] Ohio Rev. Code Ann. § 1115.05.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[19] Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[20]

First Financial and MainSource have subsidiary depository institutions that compete directly in eight banking markets in Indiana and Ohio.[21] The Board has considered the competitive effects of the proposal in each of these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market ("market deposits") that First Financial would control;[22] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the U.S. Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[23] other characteristics of the markets; and, as discussed below, commitments made by First Financial to divest three branches in the Columbus market and one branch in the Greensburg market.

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 five of the eight banking markets in which First Financial Bank and MainSource Bank compete directly.[24] On consummation of the proposal, one of these markets would remain highly concentrated, and the four other markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market and the moderately concentrated banking markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in all five banking markets.

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19 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

20 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

21 The Columbus banking market ("Columbus market"), Fayette County banking market ("Fayette County market"), and Greensburg banking market ("Greensburg market"), all in Indiana, are defined below. The other five banking markets are defined in Appendix B.

22 Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50percent. 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).

23 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.

24 The competitive effects of the proposal in these five markets are described in Appendix B.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Columbus, Fayette County, and Greensburg markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Columbus Market

Using initial screening data, First Financial is the largest depository organization in the Columbus market, controlling approximately $652.7 million in deposits, which represent approximately 27.0 percent of market deposits.[25] MainSource is the fourth largest depository organization in the Columbus market, controlling approximately $247.8 million in deposits, which represent approximately 10.2 percent of market deposits. On consummation, First Financial would remain the largest depository organization in the Columbus market, controlling approximately $900.5 million in market deposits, which would represent approximately 37.2 percent of market deposits. The HHI in this market would increase by 552 points, from 1465 to 2017.

To mitigate the potentially adverse competitive effects of the proposal in the Columbus market, First Financial has committed to divest three of MainSource Bank's nine branches in that market, which account for approximately $112.9 million in deposits, to a competitively suitable, in-market purchaser.[26] After the divestiture, First Financial would remain the largest depository organization in the market, controlling approximately $787.6 million in deposits, which would represent approximately 32.5 percent of market deposits.

In addition to the divestiture, the Board also 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 Columbus market.[27] Several factors indicate that the increase in concentration in the Columbus market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of one credit union in the Columbus market that 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 market.[28] The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This

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[25] The Columbus market is defined as Bartholomew, Jennings, Jackson, and Brown counties, all in Indiana.

[26] As a condition of consummation of the proposal, First Financial has committed that it will execute, before consummating the proposal, an agreement to sell the three branches to one or more purchasers determined by the Board to be competitively suitable. First Financial also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, First Financial has committed that, if the proposed divestiture is not completed within the 180-day period, First Financial will transfer the unsold branches to an independent trustee, who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. *See*, *e.g.*, *BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

[27] The number and strength of the 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).

[28] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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,*

weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Taking into account the divestiture of the three MainSource Bank branches to an in-market competitor, and adjusting to reflect competition from the credit union, after consummation First Financial's market share would increase to 29.6 percent, and the market concentration level as measured by the HHI would increase by 231 points, from a level of 1295 to 1526. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the credit union, 14 other depository organizations would continue to serve the Columbus market, including two with market shares greater than 12 percent each.

Fayette County Market

Using initial screening data, First Financial is the second largest depository organization in the Fayette County market, controlling approximately $54.7 million in deposits, which represent approximately 19.7 percent of market deposits.[29] MainSource is the sixth largest depository organization in the Fayette County market, controlling approximately $21.0 million in deposits, which represent approximately 7.6 percent of market deposits. On consummation, First Financial would become the largest depository organization in the Fayette County market, controlling approximately $75.7 million in deposits, which would represent approximately 27.2 percent of market deposits. The HHI in this market would increase by 297 points, from 1704 to 2001.

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 Fayette County market. Several factors indicate that the increase in concentration in the Fayette County market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

The Board has considered the competitive influence of two credit unions in the Fayette County market that meet the Board's standard conditions for inclusion in its structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, adjusting to reflect competition from these two credit unions, the market concentration level in the Fayette County market, as measured by the HHI, would increase by 267 points from a level of 1547 to 1814, and First Financial's market share would increase from 19.7 percent to 25.8 percent. After consummation, the Fayette County market would continue to be served by seven other depository organizations, including the two credit unions noted above, including three which would each control more than 16 percent of market deposits.

Greensburg Market

Using initial screening data, First Financial is the fifth largest depository organization in the Greensburg market, controlling approximately $31.9 million in deposits, which represent approximately 5.8 percent of market deposits.[30] MainSource is the largest depository organization in the Greensburg market, controlling approximately $343.0 million in deposits, which represent approximately 62.6 percent of market deposits. On consumma-

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).

[29] The Fayette County market is defined as Fayette County, Indiana.

[30] The Greensburg market is defined as Decatur County, Indiana.

tion, First Financial would become the largest depository organization in the Greensburg market, controlling approximately $374.9 million in market deposits, which would represent approximately 68.5 percent of market deposits. The HHI in this market would increase by 729 points, from 4300 to 5029.

To mitigate the potentially adverse competitive effects of the proposal in the Greensburg market, First Financial has committed to divest one of MainSource Bank's two branches in the Greensburg market to a competitively suitable, out-of-market purchaser. The branch to be divested is slightly smaller than the only branch currently operated by First Financial in the Greensburg market.[31] After this divestiture, First Financial would become the largest depository organization in the market, controlling approximately $345.1 million in deposits, which would represent approximately 63 percent of market deposits. If the branch is sold to an out-of-market competitor, the structure of the Greensburg market would be approximately the same both before and after consummation of the proposal.[32]

In addition to the divestiture, the Board also 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 Greensburg market. Several factors indicate that the increase in concentration as measured by the above HHI, as well as First Financial's resulting market share, overstate the potential competitive effects of the proposal in the Greensburg market.

The Board has considered the competitive influence of one credit union in the Greensburg market that meets the Board's standard conditions for inclusion in the structural calculations, the deposits of which are given 50 percent weight in the Board's analysis. After consummation, taking into account the divestiture of the MainSource Bank branch to an out-of-market competitor, and adjusting to reflect competition from the credit union, the market concentration level in the Greensburg market as measured by the HHI would increase by 40 points, from a level of 3967 to 4007, and First Financial's share of market deposits resulting from the transaction would be 60.4 percent. Including the credit union and a new competitor entering the market through the divestiture, after consummation the Greensburg market would be served by five other depository organizations, including two with market shares greater than 10 percent each. The presence of these market competitors suggests that First Financial would have limited ability unilaterally to offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on First Financial in the Greensburg market.

Notwithstanding these circumstances, the Board views the competitive effects in this market as presenting a close case.

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, with the proposed divestitures of branches in the Columbus and Greensburg markets, would not likely have a significantly adverse effect on competition in the Columbus, Fayette County, and Greensburg markets or in any other relevant banking market. In addition, the appropriate banking

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31 First Financial Bank's only branch in the Greensburg market has $31.9 million in deposits, representing 5.6 percent of total market deposits. MainSource Bank has two branches with deposits in Greensburg, with $312.8 million and $29.8 million, respectively. First Financial proposes to divest the smaller of these branches, representing 5.2 percent of market deposits.

32 The Board has previously approved two applications in which the post-divestiture HHI and the percentage of market deposits exceeded the post-divestiture effects in this case. *See* *Umpqua Holdings Corp.*, 100 *Federal Reserve Bulletin* 42 (2014); *Southern National Corp.*, 83 *Federal Reserve Bulletin* 597 (1997).

agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on the facts of record, including First Financial's commitment to divest a total of four branches in the Columbus and Greensburg markets, 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 of the eight banking markets in which First Financial Bank and MainSource Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Consideration

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[33] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Financial and MainSource are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[34] The asset quality, earnings, and liquidity of both First Financial Bank and MainSource Bank are consistent with approval, and First Financial appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of First Financial, MainSource, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Financial; 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.

[33] 12 U.S.C. §§ 1842(c)(2), (5), and (6) and 1828(c)(5).

[34] As part of the proposed transaction, each share of MainSource common stock would be converted into the right to receive 1.3875 shares of First Financial common stock.

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

The Board also has considered First Financial's plans for implementing the proposal. First Financial has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First Financial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First Financial's management has the experience and resources to operate the combined organization in a safe and sound manner, and First Financial plans to integrate MainSource's existing management and personnel in a manner that augments First Financial's and First Financial Bank's management.[35]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[36] 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.[37] 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 the institutions' safe and sound operation,[38] 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.[39]

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

[35] Following consummation of the proposed transaction, six MainSource directors will join First Financial's board of directors.

[36] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[37] 12 U.S.C. § 2901 *et seq.*

[38] 12 U.S.C. § 2901(b).

[39] 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of First Financial Bank and MainSource Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Cleveland ("Reserve Bank") and other federal regulatory agencies; confidential supervisory information; and information provided by First Financial.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.[40] In this case, the Board considered the supervisory views of the Reserve Bank and the Office of the Comptroller of the Currency ("OCC") with respect to First Financial Bank and the Federal Deposit Insurance Corporation ("FDIC") with respect to MainSource Bank.[41]

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.[42] 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 ("HMDA"),[43] 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 ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[44] (4) the institution's community development lending, including the

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

[41] Until its conversion on December 30, 2016, to a state member bank supervised by the Board, First Financial Bank was a national bank supervised by the OCC.

[42] 12 U.S.C. § 2906.

[43] 12 U.S.C. § 2801 *etseq*.

[44] Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of $1million 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).

number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Large institutions are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their assessment areas and 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.[45]

CRA Performance of First Financial Bank

First Financial Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of November 4, 2013 ("First Financial Bank Evaluation").[46] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.[47]

Examiners found that First Financial Bank originated a majority of its loans inside its AAs and that the bank's overall lending activity was good. Examiners also noted that the bank's geographic distribution of home mortgage loans and small loans to businesses was good. In addition, examiners found the bank's distribution of home mortgage loans by income level of the borrower to be good and the bank's distribution of loans to businesses with different revenue sizes to be adequate.

Examiners determined that First Financial Bank's level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank's service delivery systems were accessible to geographies and individuals of different income levels within the bank's AAs. Examiners also noted that, in the state of Indiana, the bank's branches were reasonably accessible. Overall, examiners found that the community development services provided by the bank were adequate and that the bank provided a good level of services in Ohio.

CRA Performance of MainSource Bank

MainSource Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of September 29, 2014 ("MainSource Bank Evaluation").[48] The bank received "Low Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.[49]

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

[46] The First Financial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2010, through December 31, 2011. The evaluation period for community development loans, investments, and services was from June 1, 2010, through December 31, 2011.

[47] The First Financial Bank Evaluation included full-scope evaluations of the Cincinnati-Middleton Ohio-Kentucky-Indiana Multistate Metropolitan Statistical Area ("MSA"); Columbus, Indiana MSA; and the Ohio Non-MSA AA. Limited scope evaluations were performed of the Bloomington, Indiana MSA; Indianapolis, Indiana MSA; Gary, Indiana MSA; Lafayette, Indiana MSA; Indiana Non-MSA AA; Lima, Ohio MSA; and the Dayton, Ohio MSA.

[48] The MainSource Bank Evaluation was conducted using Large Bank CRA Evaluation Procedures. Examiners reviewed HMDA, small business, and small farm loans originated from January 1, 2012, through December 31, 2013. The evaluation period for community development loans, investments, and services was from October 20, 2011, through September 29, 2014.

[49] The MainSource Bank Evaluation included full-scope evaluations of the Louisville-Jefferson County, Kentucky-Indiana Multistate MSA; Cincinnati-Middletown, Ohio-Indiana-Kentucky Multistate MSA; State of Indiana Non-MSA AA; Kankakee-Bradley, Illinois MSA; Dayton, Ohio MSA; and the Kentucky Non-MSA AA. Limited-scope evaluations were performed of the Anderson, Indiana MSA; Bloomington, Indiana MSA; Columbus, Indiana MSA; Gary Metropolitan Division, Indiana AA; Indianapolis-Carmel, Indiana MSA; Danville, Illinois MSA; and the State of Illinois Non-MSA AA.

Examiners found that MainSource Bank's lending levels reflected good responsiveness to credit needs within its AAs and that a substantial majority of the bank's loans were made within its AAs. Examiners further found that the geographic distribution of MainSource Bank's loans reflected adequate penetration throughout its AAs. Examiners noted that the bank's distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners stated that MainSource Bank made a relatively high level of community development loans and originated qualifying community development loans in all of the bank's AAs. Further, the bank was found to use innovative and/or flexible lending practices in order to serve AA credit needs.

Examiners found that MainSource Bank made an adequate level of qualified community development investments and grants, particularly those that were not routinely provided by private investors, although rarely in a leadership position. Examiners further noted that the bank exhibited adequate responsiveness to credit and community economic development needs, but that the bank rarely used innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were reasonably accessible to essentially all portions of the bank's AAs. Examiners also found that MainSource Bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals, and that branch services and business hours did not vary in a way that inconvenienced certain portions of the AAs, particularly LMI geographies and individuals. Examiners further noted that the bank provided an adequate level of community development services.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding its views of First Financial Bank's consumer compliance risk-management systems. The Board considered the most recent consumer compliance examination and fair lending review of First Financial Bank by the OCC. The Board also considered the most recent consumer compliance examination of MainSource Bank conducted by the FDIC.

The Board has taken this information, as well as the CRA performance records of First Financial Bank and MainSource Bank into account in evaluating the proposed transaction, including in considering whether First Financial has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm's AAs.

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. First Financial represents that it would provide a full range of deposit, savings, and other financial products and services to consumers and small- and medium-sized businesses in Ohio, Indiana, and Kentucky. First Financial states that it would continue offering all of the significant products and services currently offered by First Financial Bank and MainSource Bank after consummation of the proposal. Further, First Financial represents that, following the proposed transaction, the combined organization would be able to increase its lending limits and better meet the credit and banking needs of the small- and medium-sized businesses in its expanded service area.

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 Financial, and the 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 and the Bank Merger Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system."[50]

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[51] 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.[52]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[53]

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

[50] Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

[51] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

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

activities.[54] 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 United States banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

First Financial Bank has applied under section 9 of the FRA to establish and operate branches at the current main office and branches of MainSource Bank.[55] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Financial 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.[56] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Financial Holding Company Election

As noted, First Financial has elected to become a financial holding company in connection with the proposal. First Financial has certified that, upon consummation of the proposal, First Financial and First Financial Bank would be well capitalized and well managed, and First Financial has provided all of the information required under the Board's Regulation Y.[57] Based on all the facts of record, the Board determines that First Financial's election will become effective upon consummation of the proposal if, on that date, First Financial is well capitalized and well managed and all depository institutions it controls are well capitalized and well managed and have CRA ratings of at least "Satisfactory."

Conclusion

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

[54] First Financial Bank and MainSource Bank offer a broad range of retail and commercial banking products and services. First Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

[55] *See* 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, First Financial Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4; Ind. Code § 28-2-13-19; Ky. Rev. Stat. Ann. 286.3-920; Ohio Rev. Code Ann. §1117.01.

[56] 12 U.S.C.§ 322; 12 CFR 208.6. Upon consummation of the proposal, First Financial Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

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

the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Financial 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. 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors,\ effective February 22, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Ann E. Misback
Secretary of the Board

Appendix A

Branches to be Established by First Financial Bank

Illinois Branches
1. 101 North Hilgert Drive, Grant Park, Illinois 60940
2. 323 East Main Street, Hoopeston, Illinois 60942
3. 2000 West Court Street, Kankakee, Illinois 60901
4. 216 South Fourth Street, Watseka, Illinois 60970

Indiana Branches
1. 202 North Harrison Street, Alexandria, Indiana 46001
2. 1802 Allison Lane, Jeffersonville, Indiana 47130
3. 104 East Link's Way, Aurora, Indiana 47001
4. 136 East Harriman, Bargersville, Indiana 46106
5. 1053 State Road 229 North, Batesville, Indiana 47006
6. 3205 East Third Street, Bloomington, Indiana 47401
7. 24004 Stateline Road, Lawrenceburg, Indiana 47025
8. 9014 State Road 101, Brookville, Indiana 47012
9. 1051 West Spring Street, Brownstown, Indiana 47220
10. 221 East Main Street, Crawfordsville, Indiana 47933
11. 8740 South Emerson Avenue, Indianapolis, Indiana 46237
12. 597 Banta Street, Franklin, Indiana 46131
13. 6671 Highway 150, Floyds Knobs, Indiana 47119
14. 7700 State Road 64, Georgetown, Indiana 47122
15. 3610 Grant Line Road, New Albany, Indiana 47150
16. 122 West Washington Street, Greensburg, Indiana 47240
17. 102 West Main Street, Hagerstown, Indiana 47346
18. 136 Thornton Road, Hanover, Indiana 47243
19. 555 East Third Street, Hobart, Indiana 46342
20. 8475 North State Road 9, Hope, Indiana 47246
21. 3535 East 96th Street, Indianapolis, Indiana 46240
22. 120 East Main Street, Knightstown, Indiana 46148
23. 2253 State Road 54 East, Linton, Indiana 47441
24. 201 South Main Street, Lynn, Indiana 47355

25. 1315 Clifty Drive, Madison, Indiana 47250
26. 417 Jefferson Street, Madison, Indiana 47250
27. 201 North Broadway, Greensburg, Indiana 47240
28. 11 South Meridian, Ste 101, Indianapolis, Indiana 46204
29. 100 East Spring Street, New Albany, Indiana 47150
30. 600 South Memorial Drive, New Castle, Indiana 47362
31. 501 Clifty Drive, Madison, Indiana 47250
32. 521 North State Street, North Vernon, Indiana 47265
33. 112 North Meridian Street, Portland, Indiana 47371
34. 3433 East Main Street, Richmond, Indiana 47374
35. 230 Main Street, Rising Sun, Indiana 47040
36. 202 North Main Street, Rushville, Indiana 46173
37. 1130 East Tipton Street, Seymour, Indiana 47274
38. 28287 State Route 1, West Harrison, Indiana 47060
39. 3880 West Presidential Way, Edinburgh, Indiana 46124
40. 1012 South Adams Street, Versailles, Indiana 47042
41. 102 West Main Street, Vevay, Indiana 47043
42. 1263 North Indiana 135, Greenwood, Indiana 46142
43. 120 North Monroe Street, Williamsport, Indiana 47993

Kentucky Branches
1. 1905 Blankenbaker Parkway, Louisville, Kentucky 40299
2. 9819 Brownsboro Road, Louisville, Kentucky 40241
3. 6512 Bardstown Road, Louisville, Kentucky 40291
4. 2862 Frankfort Avenue, Louisville, Kentucky 40206
5. 201 Limestone Drive, Frankfort, Kentucky 40601
6. 104 South Chiles Street, Harrodsburg, Kentucky 40330
7. 1012 Bypass North, Lawrenceburg, Kentucky 40342
8. 293 North Hubbards Lane, Louisville, Kentucky 40207
9. 293 North Hubbards Lane, Louisville, Kentucky 40207
10. 13704 Shelbyville Road, Louisville, Kentucky 40245
11. 1734 Midland Trail, Shelbyville, Kentucky 40065
12. 2735 Bardstown Road, Louisville, Kentucky 40205
13. 9306 Taylorsville Road, Louisville, Kentucky 40299
14. 211 West Oak Street, Louisville, Kentucky 40203
15. 295 North Hubbards Lane, Louisville, Kentucky 40207

Ohio Branches
1. 7637 Beechmont Avenue, Cincinnati, Ohio 45255
2. 3723 Glenmore Avenue, Cincinnati, Ohio 45211
3. Summit Woods 1, 100 East Business Way, Suite 150, Cincinnati, Ohio 45241
4. 585 Anderson Ferry Road, Cincinnati, Ohio 45238
5. 6300 Harrison Avenue, Cincinnati, Ohio 45247
6. 10425 Harrison Avenue, Harrison, Ohio 45030
7. 3442 Edwards Road, Cincinnati, Ohio 45208
8. 5550 Cheviot Road, Cincinnati, Ohio 45239
9. 2000 Madison Road, Cincinnati, Ohio 45208
10. 7615 Reading Road, Cincinnati, Ohio 45237
11. 11186 Reading Road, Cincinnati, Ohio 45241
12. 635 South Market Street, Troy, Ohio 45373
13. 1580 West Main Street, Troy, Ohio 45373
14. 101 East Elm Street, Union City, Ohio 45390
15. 5791 Glenway Avenue, Cincinnati, Ohio 45238

Appendix B

First Financial/MainSource 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
Bloomington, Indiana – includes Greene, Monroe, and Lawrence counties.						
First Financial Pre-Consummation	3	$317.3M	10.04			
MainSource	9	$137.0M	4.33			
First Financial Post-Consummation	3	$454.3M	14.37	1499	87	15
Gary/Hammond, Indiana – includes Lake, Porter, La Porte, Newton, Jasper counties; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County.						
First Financial Pre-Consummation	9	$702.5M	4.81			
MainSource	16	$134.2M	0.92			
First Financial Post-Consummation	8	$836.7M	5.73	1003	8	29
Indianapolis, Indiana – includes Boone, Hamilton, Hancock, Hendricks, Henry, Johnson, Madison, Marion, Morgan, Owen, Putnam, Rush, Shelby, and Tipton counties.						
First Financial Pre-Consummation	14	$620.0M	1.32			
MainSource	18	$452.7M	0.91			
First Financial Post-Consummation	12	$1.05B	2.23	1125	2	48
Cincinnati, Ohio – includes Brown, Butler, Clermont, Hamilton, and Warren counties, Ohio; Dearborn County, Indiana; Boone, Bracken, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky; and the New Liberty and Owenton census county divisions in Owen County, Kentucky.						
First Financial Pre-Consummation	6	$2.24B	2.03			
MainSource	11	$568.5M	0.52			
First Financial Post-Consummation	4	$2.80B	2.54	3426	2	63
Dayton, Ohio – includes Montgomery, Miami, Greene, and Preble counties.						
First Financial Pre-Consummation	7	$370.3M	3.13			
MainSource	11	$144.3M	1.22			
First Financial Post-Consummation	7	$514.7M	4.35	1534	8	28

Data and rankings are as of June 30, 2017. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted for each market includes thrifts, where applicable.

Order Issued Under International Banking Act

Deutsche Pfandbriefbank AG
Unterschleissheim, Germany

Order Approving the Establishment of a Representative Office
FRB Order No. 2018-01 (January 3, 2018)

Deutsche Pfandbriefbank AG ("PBB"), Unterschleissheim, Germany, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 10(a) of the IBA[1] to establish a representative office in New York, New York. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, June 5, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

Hypo Real Estate Holding GmbH ("HRE Holding"), Munich, Germany, owns 20 percent of PBB's outstanding shares and is the largest individual shareholder of PBB. The German government is the sole owner of HRE Holding.[2] No other shareholder owns more than 5 percent of the shares of PBB.

PBB, with total assets of approximately $68 billion, is the 15th largest bank in Germany by asset size.[3] PBB engages primarily in commercial real estate and public investment finance through five offices in Germany. PBB operates branches in France, Spain, Sweden, and the United Kingdom. PBB has two nonbank subsidiaries in the United States, Hypo Real Estate International Trust I and Hypo Real Estate International LLCI.[4]

The proposed representative office would act as a liaison between PBB on the one hand and its existing and potential customers, U.S. service providers, and business contacts on the other. The proposed representative office would also engage in other representational activities, including soliciting business, conducting research, and performing preliminary steps in connection with lending, including assembling credit information.[5] These activities would be limited to facilitating the origination of commercial real estate financing transactions.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject

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1 12 U.S.C. § 3107(a).

2 The German Financial Market Stabilization Fund, which is under the control of the German Federal Ministry of Finance, owns 100 percent of HRE Holding.

3 Asset and ranking data are as of September 30, 2017, and are based on the exchange rate as of that date.

4 PBB plans to dissolve these subsidiaries in the near future.

5 A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

to comprehensive supervision on a consolidated basis by their home country supervisor.[6] The Board also considers additional standards set forth in the IBA and Regulation K.[7]

As noted above, PBB engages directly in the business of banking outside the United States. PBB also has provided the Board with the information necessary to assess the application, through submissions that address the relevant issues.

PBB is subject to the direct prudential supervision of the European Central Bank ("ECB") within the context of the Single Supervisory Mechanism ("SSM") because the total value of its assets exceeds €30 billion. The SSM is a system of financial supervision composed of the ECB and the national competent authorities of the participating member states in which specific tasks are distributed between the ECB and each national competent authority. Under the SSM, the ECB has direct prudential supervisory responsibility for PBB, while Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"), as the relevant national competent authority for PBB, retains supervisory authority over all other areas, including consumer protection and the prevention of money laundering and terrorist financing.

The methodologies and standards that underpin the day-to-day supervision of large European Union banking organizations by the ECB under the SSM regulatory framework are aimed at achieving a consistent supervisory approach across the European Union. The Board has previously found that other European banking organizations supervised by the SSM and the relevant national competent authority are subject to comprehensive consolidated supervision.[8] The system of supervision applied to all large banks within the European Union has not changed materially since it was last considered by the Board.

Based on all the facts of record, including the above information, it has been determined that PBB is subject to comprehensive supervision on a consolidated basis by the ECB and BaFin acting through the SSM.

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering,

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6 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationships between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

7 *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

8 *SeeING Bank N.V.*, FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); Board letter to Andrea Tokheim dated July 24, 2017 (comprehensive consolidated supervision for Bank of Ireland Group plc); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2016-01 (January 19, 2016).

and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.[9]

Germany is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Germany has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Germany, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. BaFin enforces these requirements with respect to German banks, including PBB. PBB has policies and procedures to comply with these laws and regulations that are monitored by governmental entities, including BaFin, responsible for anti-money-laundering compliance.

PBB appears to have the experience and capacity to support the proposed representative office. In addition, PBB has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration PBB's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

PBB has committed to make available to the Board such information on the operations of PBB and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended,[10] and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, PBB has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the ECB and BaFin may share information on PBB's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that PBB has provided adequate assurances of access to any necessary information that the Board may request. In addition, the ECB has no objection to the establishment of the proposed representative office.

The Board has also considered whether PBB's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of PBB in its home country; the scope of PBB's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising PBB in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by PBB, PBB's application to establish the proposed representative office is hereby approved by the

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[9] *See* 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).
[10] 12 U.S.C. § 1841 *et seq*.

Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[11] Should any restrictions on access to information on the operations or activities of PBB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by PBB or its affiliates with applicable federal statutes, the Board may require termination of any of PBB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by PBB with the conditions imposed in this order and the commitments made to the Board in connection with this application.[12] For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective December 21, 2017.

Ann E. Misback
Secretary of the Board

[11] 12 CFR 265.7(d)(12).

[12] The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of PBB in accordance with any terms or conditions that they may impose.

Order Issued Under Home Owners' Loan Act

The Charles Schwab Corporation
San Francisco, California

Order Approving the Acquisition of a State Savings Bank
FRB Order No. 2018-08 (March 20, 2018)

The Charles Schwab Corporation ("Charles Schwab"), San Francisco, California, a savings and loan holding company ("SLHC"), has requested the Board's approval under section 10(e) of the Home Owners' Loan Act, as amended ("HOLA"),[1] to acquire Charles Schwab Trust Bank, Henderson, Nevada, a *de novo* state savings bank that has elected to be treated as a savings association pursuant to section 10(*l*) of HOLA.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 58604 (December 13, 2017)).[3] The time for submitting comments has expired, and the Board has considered the proposal, all comments received, and the factors set forth in section 10(e) of HOLA in light of all the information of record.[4] The Federal Deposit Insurance Corporation ("FDIC") has approved the related application under section 18(c) of the Federal Deposit Insurance Act[5] for Charles Schwab Trust Bank to acquire certain assets and assume certain liabilities from Charles Schwab Bank, Henderson, Nevada.[6]

Charles Schwab, with consolidated assets of approximately $243.3 billion, is the 15th largest insured depository organization in the United States.[7] Charles Schwab controls two insured depository institutions, Charles Schwab Bank and Charles Schwab Signature Bank, both of Henderson, Nevada, with approximately $165.3 billion in consolidated deposits, which represent approximately 1.3 percent of the total amount of deposits of insured depository institutions in the United States.[8]

Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly, or that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the

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1 12 U.S.C. § 1467a(e).

2 12 U.S.C. § 1467a(*l*).

3 12 CFR 238.14(c)(2).

4 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

5 12 U.S.C. § 1828(c).

6 Charles Schwab proposes to establish Charles Schwab Trust Bank as a *de novo* state-chartered savings bank to consolidate the firm's trust services and related activities into a single fiduciary-oriented bank. Charles Schwab Trust Bank would acquire certain trust assets and assume certain liabilities from Charles Schwab Bank. On December 26, 2017, the FDIC approved Charles Schwab Trust Bank's deposit insurance application. On December 28, 2017, the state of Nevada approved Charles Schwab Trust Bank's charter application.

7 The national asset datum is as of December 31, 2017, and the deposit and ranking data are as of September 30, 2017.

8 For purposes of HOLA, a state bank or state savings association's home state is the state by which the savings association is chartered. *See* 12 U.S.C. § 1467a(e)(7)(B)(ii). An SLHC's home state is the state in which the total deposits of all insured depository institution subsidiaries of such company were the largest on the date on which the company became an SLHC. *See* 12 U.S.C. § 1467a(e)(7)(B)(iv). Nevada is the home state for Charles Schwab, its subsidiary depository institutions, and CharlesSchwab Trust Bank. In addition, Charles Schwab Trust Bank has offices only in Nevada. Accordingly, the proposed acquisition does not trigger the interstate provisions of HOLA. *See* 12 U.S.C. §1467a(e)(2)(E) and 1467a(e)(3).

United States.[9] HOLA also prohibits the Board from approving a proposal if the proposal would substantially lessen competition, tend to create a monopoly, or in any other manner restrain trade in any section of the country, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[10]

The proposal involves the formation and acquisition of a *de novo* state-chartered savings bank in the Las Vegas, Nevada banking market, which would expand the operations of Charles Schwab in the market and increase its ability to offer products and services to customers in that market.[11] The Board previously has noted that the establishment of a *de novo* bank enhances competition in the relevant banking market and is a positive consideration in an application under section 3 of the Bank Holding Company Act.[12] The Board believes the same considerations are applicable under section 10(e) of HOLA.

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

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

Financial and Managerial Resources and Future Prospects

In reviewing proposals under HOLA, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews public and supervisory information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the public comment on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institution. In addressing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in light of their financial and managerial resources and the proposed business plan. The Board has consulted with the Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB") regarding this proposal.

[9] 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

[10] 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

[11] The Las Vegas, Nevada, banking market is defined as the Las Vegas Metropolitan Area in Clark County, Nevada.

[12] *See Synovus Financial Corp.*, 91 *Federal Reserve Bulletin* 273, 274 (2005); *Wilson Bank Holding Company*, 82 *Federal Reserve Bulletin* 568, 568 (1996).

Charles Schwab is well capitalized and would remain so on consummation of the proposal. The asset quality, earnings, and liquidity of Charles Schwab and its subsidiary depository institutions are consistent with approval, and Charles Schwab appears to have adequate resources to absorb the costs of the proposal. In addition, future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of Charles Schwab and Charles Schwab Trust Bank.[13] This consideration included an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of Charles Schwab and Charles Schwab Trust Bank; their record of compliance with laws and regulations; and the record of Charles Schwab and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[14] The Board has reviewed the examination records of Charles Schwab and its subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Charles Schwab; the supervisory experiences of the Board and of other relevant bank supervisory agencies with Charles Schwab and its subsidiary depository institutions; and the organization's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

The existing risk-management program and the directors and senior management of Charles Schwab are considered to be satisfactory. The directors and senior executive officers of Charles Schwab have knowledge of and experience in the banking and financial services sectors. Charles Schwab has indicated that it will devote significant financial and other resources to address all aspects of the post-integration process for this proposal.

Based on all the facts of record, including the supervisory record of Charles Schwab and its subsidiary depository institutions, the managerial and operational resources of Charles Schwab, the business plan of Charles Schwab Trust Bank after consummation, and the public comment 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 record of effectiveness of Charles Schwab in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 10(e) of HOLA, the Board considers the effect of the transaction on the convenience and needs of the communities to be served.[15] 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 these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act of 1977 ("CRA").[16] 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,[17] and requires the appropriate federal financial supervisory agency to

[13] 12 CFR 238.15(b)(2).
[14] *See* 12 U.S.C. § 1467a(e)(1)(B); 12 CFR 238.15(b)(2).
[15] 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).
[16] 12 CFR 238.15(b)(3).
[17] 12 U.S.C. § 2901(b).

assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating expansionary proposals.[18]

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

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

Summary of Public Comment on Convenience and Needs

A commenter objected to the proposal alleging that, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),[19] Charles Schwab Bank lent only to white borrowers with incomes above 120 percent of the area median income in the Reno, Nevada, Metropolitan Statistical Area ("Reno MSA").[20]

Businesses of Involved Institutions and Response to Comment

Charles Schwab, a savings and loan holding company headquartered in San Francisco, California, engages in securities brokerage, retail banking, and related financial services. The subsidiary depository institutions of Charles Schwab offer a range of loan and deposit products, including checking, savings, and residential mortgage loans, as well as trust and custody services and related products to retirement plan sponsors and participants. With respect to Charles Schwab Bank's lending record in the Reno MSA, Charles Schwab notes that Charles Schwab Bank's existing CRA rating is "Outstanding." Charles Schwab also argues that with respect to its full lending record in the Reno MSA, it is meeting the needs of the communities it serves.

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

[18] 12 U.S.C. § 2903.

[19] 12 U.S.C. § 2801 *et seq*.

[20] The commenter also criticized the workplace benefit plans of Charles Schwab, noting that employees of Charles Schwab had filed a lawsuit alleging that the 401(k) plans of Charles Schwab have expensive fees and poor performance that have benefited Charles Schwab at the expense of its employees. *See Severson v. Charles Schwab Corp.*, No. 4:17-cv-00285-CW (N.D. Cal. 2017). Charles Schwab has denied any wrongdoing. The allegations regarding the performance of 401(k)plans and fees charged by plan sponsors are matters that are reviewed under the Employee Retirement Income Security Act of 1974. *See* 29 U.S.C. § 1001 *et seq*. The allegations are currently under review in the appropriate legal forum, and action on this proposal would not interfere with the court's ability to resolve the pending litigation. *See Natcom Bancshares Inc.*, FRB Order No. 2017-37 at 6 n.18 (December 18, 2017); *M&P Community Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C156, C156 n.7 (2006).

supervisors of the CRA performance records of the relevant institutions, as well as information and views by the appropriate federal supervisors.[21] In this case, the Board considered the supervisory views of the OCC and CFPB.

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.[22] 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.

Under the CRA, an institution may elect to use a strategic plan for the evaluation of its record of helping to meet the credit needs of its assessment areas. Under this alternative, a bank submits a plan, subject to the approval of the firm's primarily federal regulator, specifying measurable goals for meeting the lending, investment, and service needs of the bank's assessment areas.[23] The primary federal regulator then evaluates the bank on its success in achieving the goals in the approved plan.[24] The primary federal regulator generally evaluates the plan's measurable goals by examining (1) the extent and breadth of lending or lending-related activities; (2) the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels; (3) the extent of community development lending; (4) the use of innovative or flexible lending practices to address credit needs; (5) the amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and (6) the availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.[25]

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 Charles Schwab Bank

Charles Schwab Bank was assigned an overall "Outstanding" rating by the OCC at its most recent CRA performance evaluation, as of January 6, 2014 (the "Charles Schwab Bank Evaluation").[27] Charles Schwab Bank received "Outstanding" ratings for each of the Lending Test, the Investment Test, and the Service Test.

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

[22] 12 U.S.C. § 2906.

[23] *See* 12 CFR 25.27, 12 CFR 228.27, and 12 CFR 345.27. Before submitting its plan for approval, the institution must seek suggestions from members of the public in the bank's assessment areas, and, once the plan has been developed, the bank must solicit public comment on its plan for at least 30 days. *See*, *e.g.*, 12 CFR 228.27(d).

[24] *See*, *e.g.*, 12 CFR 228.27(f)(3).

[25] *Id.*

[26] 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.

[27] The Charles Schwab Bank Evaluation was conducted pursuant to an OCC-approved strategic CRA plan. *See* 12 CFR 25.27. The evaluation period for the Charles Schwab Bank Evaluation was October 1, 2010, through December 31, 2013, and the evaluation reviewed the bank's CRA performance under strategic plans approved by the OCC in October 2012 for the period of October 1, 2012, through December 31, 2015 (the"2012 Plan")

Examiners found that Charles Schwab Bank significantly exceeded the community development lending thresholds in both the 2009 Plan and the 2012 Plan for outstanding performance. Examiners also noted that the bank's percentage of LMI loans exceeded the 2009 Plan thresholds for satisfactory performance and met the 2012 goals for satisfactory performance. In the Reno MSA, an area of concern to the commenter, examiners found that the bank's overall lending performance exceeded the goals for outstanding performance for the entire evaluation period. Examiners also noted that Charles Schwab Bank's lending to LMI borrowers and in LMI geographies exceeded the satisfactory performance goals set forth in the bank's plans. Examiners found that the bank exceeded its satisfactory performance goals for originating HMDA loans to LMI borrowers and in LMI geographies.

Examiners found that Charles Schwab Bank's community development investments exceeded the threshold for satisfactory performance in the 2009 Plan and substantially exceeded the 2012 Plan thresholds for outstanding performance. In the Reno MSA, examiners found the bank exceeded its goals for outstanding performance in originating community development investments. Examiners also noted that some of the bank's investments were highly responsive to assessment area needs.

Examiners found that the bank's community development services exceeded the goals set for outstanding performance in the 2009 Plan and substantially exceeded the thresholds for outstanding performance in the 2012 Plan. In the Reno MSA, examiners noted that Charles Schwab Bank exceeded its outstanding performance goals for community development services. Examiners found that Charles Schwab Bank was a service leader in the Reno MSA, and its community development services were highly responsive to identified needs in the Reno MSA.

Charles Schwab Bank's Efforts Since the 2014 CRA Evaluation

Charles Schwab represents that, since the Charles Schwab Bank Evaluation, the bank has continued its CRA efforts in its community and continues to strive to implement innovative and complex lending, investing, and services programs. Charles Schwab Bank represents that it is now operating under a new strategic plan that runs from 2016 through 2018. The bank also represents that its CRA program includes a number of services in its assessment areas, including to promote financial opportunities for low-income students and to bring together community partners to work on improving initiatives for the public benefit, such as food access, employment opportunities, affordable housing, health care access, and health education.

CRA Performance of Charles Schwab Signature Bank

Charles Schwab acquired Nordstrom fsb ("Nordstrom Bank") in November 2017, renaming it Charles Schwab Signature Bank and fundamentally changing its business plan. The OCC has not yet conducted a CRA evaluation of Charles Schwab Signature Bank.[28]

and by the Office of Thrift Supervision in 2009 for the period of October 1, 2009, through September 30, 2012 (the "2009 Plan"). The Charles Schwab Bank Evaluation reviewed the bank's performance toward meeting the strategic plan in the Reno MSA, as well as the San Francisco–Oakland–Hayward and the San Jose–Sunnyvale–Santa Clara MSAs, both in California.

[28] NordstromBank, the predecessor bank to Charles Schwab Signature Bank, received an "Outstanding" rating by the OCC at its most recent CRA performance evaluation, as of September 28, 2015 (the "Nordstrom Bank Evaluation"). The Nordstrom Bank Evaluation was conducted using limited-purpose CRA examination procedures. The limited-purpose evaluation reviewed the bank's community development lending, qualified investments or community development services, use of innovative or complex qualified investments, community development loans or community development services, and the bank's responsiveness to community development credit needs within its assessment area. The evaluation period was from January 1, 2010, through August 31, 2015. The Nordstrom Bank Evaluation included a review of the bank's assessment area in the

Charles Schwab notes it is in the process of constituting a new CRA program at Charles Schwab Signature Bank. Charles Schwab represents that the new CRA program will be based on Charles Schwab Bank's existing CRA program and will be integrated with the overall CRA efforts of Charles Schwab.

Additional Supervisory Views

In its review of the proposal, the Board has considered the supervisory views of the OCC and the CFPB regarding the records of Charles Schwab Bank and Charles Schwab Signature Bank in complying with the CRA, fair lending laws, and other consumer statutes

The Board has considered the results of recent consumer compliance examinations of Charles Schwab Bank conducted by the OCC and the CFPB. As part of its consumer compliance review, the OCC reviewed Charles Schwab Bank's policies, procedures, board reports, audits, internal risk reports, risk assessments, and consumer compliance management processes for complying with fair lending and other consumer compliance laws. The CFPB also conducted supervisory reviews of Charles Schwab Bank's compliance with certain consumer laws, including a review of the bank's compliance policies, procedures, training, and monitoring and corrective action process.[29]

The Board has taken these consultations into account in evaluating this proposal, including in considering whether Charles Schwab has the experience and resources to ensure that it helps to meet the credit needs of the communities within 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. Charles Schwab represents that, as a result of the proposal, Charles Schwab Trust Bank would be a fiduciary-oriented bank that offers the trust and custody services and related products currently offered by a division of Charles Schwab Bank to retirement plan sponsors and participants and that this will better allow the firm to serve the needs of the growing retirement market. Charles Schwab also represents that Charles Schwab Trust Bank would be able to offer more consistent services that are better tailored to its customers' needs than those currently offered by Charles Schwab Bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of Charles Schwab Bank and Charles Schwab Signature Bank under the CRA, the records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by Charles Schwab, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Phoenix–Mesa–Scottsdale, Arizona MSA. Examiners found that the bank demonstrated a high level of community development lending, qualified investments, and community development services. Examiners also noted that the bank demonstrated excellent responsiveness to credit and community development needs in its assessment area.

[29] No consumer compliance examination of Charles Schwab Signature Bank has yet been completed.

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

In acting on a proposal under section 10(e) of HOLA, the Board considers the likely effect of the transaction on the savings association and any insurance risk to the Deposit Insurance Fund.[30] As discussed above, the financial and managerial resources and the future prospects of the combined organization are consistent with approval. The Board has considered the likely effect of the transaction on the insured depository institutions of Charles Schwab and believes that it is consistent with approval. In view of the current resources, capital, and future prospects of Charles Schwab; the managerial resources of Charles Schwab and its insured depository institutions; the significant financial, managerial, and other resources being devoted to support the *de novo* bank; and the likely effect of the transaction on the proposed organization, the Board, after consulting with the FDIC, believes that the proposal would not appear likely to have any material effect on the insurance risk to the Deposit Insurance Fund.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under HOLA. The Board's approval is specifically conditioned on compliance by Charles Schwab with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 20, 2018.

Voting for this action: Chairman Powell, Vice Chairman for Supervision Quarles, and Governor Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

[30] 12 U.S.C. § 1467a(e)(2).