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Legal Developments: First Quarter, 2019

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

First Busey Corporation
Champaign, Illinois

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2019-01 (January 10, 2019)

First Busey Corporation ("FBC"), Champaign, Illinois, 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 The Banc Ed Corp. ("Ed Corp"), and thereby indirectly acquire The Bank of Edwardsville ("Ed Bank"), both of Edwardsville, Illinois. Following the proposed acquisition, Ed Bank would be merged into FBC's subsidiary bank, Busey Bank, Champaign, Illinois.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 46488 (September 13, 2018)).[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.

FBC, with consolidated assets of approximately $7.8 billion, is the 164th largest insured depository organization in the United States.[5] FBC controls approximately $6.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FBC controls Busey Bank, which operates in Illinois, Missouri, Indiana, and Florida. FBC is the 17th largest insured depository organization in Illinois, controlling deposits of approximately $5.0 billion, which represent 1.0 percent of the total deposits of insured depository institutions in that state.[6] FBC is the 25th largest insured depository organization in Missouri, controlling deposits of approximately $922.3 million, which represent 0.6 percent of the total deposits of insured depository institutions in that state.

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 The merger of Ed Bank into Busey Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The FDIC approved the bank merger on December 6, 2018.
4 12 CFR 262.3(b).
5 National asset data are as of June 30, 2018. National deposit, ranking, and market-share data are as of June 30, 2018, unless otherwise noted.
6 State deposit data are as of June 30, 2018, unless otherwise noted.

Ed Corp, with consolidated assets of approximately $1.9 billion, is the 437th largest insured depository organization in the United States. Ed Corp controls approximately $1.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Ed Corp controls Ed Bank, which operates in Illinois and Missouri. Ed Corp is the 31st largest insured depository organization in Illinois, controlling deposits of approximately $1.6 billion, which represent 0.3 percent of the total deposits of insured depository institutions in that state. Ed Corp is the 264th largest insured depository organization in Missouri, controlling deposits of approximately $11.8 million, which represent less than 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, FBC would become the 150th largest insured depository organization in the United States, with consolidated assets of approximately $9.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. FBC would control consolidated deposits of approximately $7.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] In Illinois, FBC would become the 15th largest insured depository organization, controlling deposits of approximately $6.6 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. In Missouri, FBC would remain the 25th largest insured depository organization, controlling deposits of approximately $934.2 million, which represent approximately 0.6 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.[8] The Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[9] In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, 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.[10]

For purposes of the BHC Act, the home state of FBC is Illinois, and Ed Bank is located in Illinois and Missouri.[11] FBC and Busey Bank are well capitalized and well managed under

[7] In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

[8] 12 U.S.C. § 1842(d)(1)(A).

[9] 12 U.S.C. § 1842(d)(1)(B).

[10] 12 U.S.C. § 1842(d)(2)(A) and (B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

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

applicable law, and Busey Bank has an overall "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").[12] Missouri has no statutory minimum age requirements that apply to the proposal,[13] and Ed Bank has been in existence for more than five years.

On consummation of the proposed transaction, FBC would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Illinois imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control,[14] and Missouri imposes a 13 percent limit.[15] In each of these states, the only states in which FBC and Ed Corp have overlapping banking operations, the combined banking organization would control less than the total amount of in-state deposits that a single banking organization may control. The Board has considered all other requirements under section 3(d) of the BHC Act, including Busey 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 section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[16] The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[17]

Busey Bank and Ed Bank compete directly in the St. Louis, Missouri, banking market ("St. Louis market").[18] 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 share of total deposits in insured depository institutions in the market ("market deposits") that FBC would control;[19] the concentration levels of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive

[12] 12 U.S.C. § 2901 *et seq*.

[13] Missouri law prohibits the interstate acquisition of a Missouri bank that has been in existence for fewer than 5 years. *See* Mo. Ann. Stat. § 362.077(1). Missouri's minimum age requirements do not apply to the proposal because Ed Bank is a state bank that is not chartered under Missouri law.

[14] 205 Ill. Comp. Stat. 5/21.3(a).

[15] Mo. Ann. Stat. § 362.915.

[16] 12 U.S.C. § 1842(c)(1).

[17] 12 U.S.C. § 1842(c)(1)(B).

[18] The St. Louis market is defined as the city of St. Louis, Missouri; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington counties, all of Missouri; Roark, Boeuf, Canaan, and Brush Creek townships, including the cities of Hermann and Owensville, all in Gasconade County, Missouri; Boone township in Crawford County, Missouri; Loutre township in Montgomery County, Missouri; Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, and St. Clair counties, all of Illinois; the western part of Randolph County, Illinois, defined by Route 3 on the east and the Kaskaskia River on the south (including the cities of Red Bud, Ruma, and Evansville, Illinois); Washington County, Illinois (minus Ashley and DuBois townships); and the entire city of Centralia, Illinois.

[19] State deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *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).

Review guidelines ("DOJ Bank Merger Guidelines");[20] 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 St. Louis market. On consummation of the proposal, the St. Louis market would remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI would be small and numerous competitors would remain in the St. Louis market.[21]

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. 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 St. Louis market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[22] 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.

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

[21] FBC operates the 18th largest depository institution in the St. Louis market, controlling approximately $922.3 million in deposits, which represent approximately 1.0 percent of market deposits. Ed Corp operates the 9th largest depository institution in the St. Louis market, controlling approximately $1.6 billion in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, FBC would become the 7th largest depository organization in the market, controlling deposits of approximately $2.5 billion, which represent approximately 2.8 percent of market deposits. The HHI in the St. Louis market would increase by 3 points to 805, and 131 competitors would remain in the market.

[22] 12 U.S.C. § 1842(c)(2), (5), and (6).

FBC and Busey Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.[23] The asset quality, earnings, and liquidity of both Busey Bank and Ed Bank are consistent with approval, and FBC 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 FBC, Ed Corp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FBC; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

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

The Board also has considered FBC's plans for implementing the proposal. FBC 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. In general, FBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective.[24] In addition, FBC's management has the experience and resources to operate the combined organization in a safe and sound manner, and FBC plans to integrate Ed Corp's existing management and personnel in a manner that augments FBC's management.[25]

Based on all the facts of record, including FBC'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 FBC and Ed Corp in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[26] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit

[23] To effect the transaction, each share of Ed Corp common stock would be converted into the right to receive a cash amount and FBC common stock, based on an exchange ratio. FBC has the financial resources to effect the proposed transaction.

[24] FBC represents that it may adopt risk-management policies and procedures from Ed Corp, and these are considered acceptable from a supervisory perspective.

[25] Following consummation of the holding company merger, an individual on the board of directors of Ed Corp would join the board of directors of FBC.

[26] 12 U.S.C. § 1842(c)(2).

needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal bank 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 operations,[27] and requires the appropriate federal bank 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.[28]

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

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

Public Comments on the Proposal

The Board received a letter from a commenter, representing 15 community organizations, objecting to the proposal on the basis of Busey Bank's CRA record in the St. Louis, Missouri, metropolitan area ("St. Louis area").[29] The commenters asserted that Busey Bank has failed to maintain a high level of lending and serving in LMI neighborhoods within the St. Louis area since it merged with Pulaski Bank, National Association ("Pulaski Bank"), in 2016. The commenters expressed concern regarding the total percentage of loans that Busey Bank originated to LMI borrowers and communities within the St. Louis area, as reflected in Home Mortgage Disclosure Act ("HMDA") data from 2016 and 2017. The commenters argued that Busey Bank's lending to LMI borrowers lagged behind peer institutions and the lending record of Pulaski Bank.

In addition, the commenters expressed concern regarding the potential effect of the proposal on lending to Hispanic and African American borrowers within the St. Louis area. Specifically, the commenters stated that Ed Bank is a leader in lending to Hispanic borrowers due in part to the bank's innovative mortgage products and bilingual branch in Fairmont City, Illinois. The commenters urged Busey Bank to maintain the innovative products and services offered by Ed Bank in order to better serve the Hispanic community. In addition, the commenters expressed concern regarding the total percentage of loans that each of Busey Bank and Ed Bank originated to African American borrowers within the St. Louis area, as reflected in 2016 and 2017 HMDA data. The commenters urged

[27] 12 U.S.C. § 2901(b).

[28] 12 U.S.C. § 2903.

[29] FBC submitted a comment that it received from a community organization in support of the proposal. The organization represented that Busey Bank has a record of assisting community development programs in the St. Louis area.

Busey Bank to provide commitments that describe how it plans to meet the credit needs of African American borrowers and communities.

The commenters also criticized Busey Bank's record of community development lending, investments, and services within the St. Louis area. The commenters asserted that Ed Bank is a leader in community development activities and expressed concern that the proposal could negatively impact communities currently served by Ed Bank.

The commenters requested that approval of the proposal be conditioned on Busey Bank adopting a community benefits agreement with commitments specific to lending, branches, services, community development lending and investments, and community engagement.[30]

Businesses of the Involved Institutions and Response to the Public Comments

FBC operates primarily through Busey Bank, which operates a network of branches in Illinois, Missouri, Indiana, and Florida. Busey Bank offers a variety of products and services, including checking and savings accounts, mortgage and business loans, and asset management services.

Ed Corp operates primarily through Ed Bank, which operates a network of branches in Illinois and Missouri. Ed Bank offers a variety of products and services, including checking and savings accounts, mortgage and business loans, and wealth management services.

FBC asserts that the HMDA data referenced by the commenters do not fully reflect Busey Bank's CRA record. Specifically, FBC argues that the HMDA data are affected by demographic and economic factors in the St. Louis area that impact home ownership for LMI borrowers. Furthermore, FBC represents that Busey Bank's entry into the St. Louis area banking market resulted in slight disruptions to the bank's mortgage lending, which FBC attributes to the post-merger integration of Pulaski Bank and Busey Bank's sale of out-of-footprint mortgage offices. FBC asserts that Busey Bank is currently better geographically positioned and has strengthened its overall lending activity and focus on markets served by the bank.

In addition, FBC notes that the HMDA data referenced by the commenters do not suggest a pattern of discrimination or the presence of a fair lending issue at Busey Bank. FBC asserts that Busey Bank is committed to the fair and equal treatment of all customers and represents that the bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations.

FBC represents that Busey Bank currently offers mortgage products and loan programs within the St. Louis area that are designed to help meet the credit needs of LMI borrowers and communities. FBC also represents that Busey Bank is a leader in making community development loans within the St. Louis area based on volume, responsiveness, and complexity. Further, FBC asserts that Busey Bank has a strong record of community outreach, including providing employees paid time off to serve their communities. FBC represents that employees of Busey Bank have focused their volunteer activities within the St. Louis area on efforts that support community services, affordable housing, and the revi-

[30] The Board consistently has 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 private party. *See, e.g., Synovus Financial Corp.* and *Synovus Bank*, FRB Order No. 2018-25 at 12 n. 30 (December 7, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *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.

talization and stabilization of neighborhoods. In addition, FBC represents that Busey Bank partners with community organizations in the St. Louis area that support, among other things, LMI borrowers, affordable housing, small business lending, and economic development. FBC represents that Busey Bank plans to strengthen its CRA program through the proposed acquisition by adopting innovative CRA-related products and services currently offered by Ed Bank, including the MyCommunity Home Loan product and multilingual services at branch locations.

Records of Performance under the CRA

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

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[32] 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 financial 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 large insured depository institutions, such as Busey Bank and Ed Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates an 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 HMDA,[33] 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;[34] (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.[35] Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that

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

[32] 12 U.S.C. § 2906.

[33] 12 U.S.C. § 2801 *et seq.*

[34] 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).

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

benefit their AAs, and a service test, which evaluates both the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[36]

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.[37] Consequently, the Board evaluates HMDA data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of Busey Bank

Busey Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of September 30, 2015 ("Busey Bank Evaluation").[38] The bank received "Outstanding" ratings for the Lending Test and Service Test, and the bank received a "High Satisfactory" rating for the Investment Test.[39]

Examiners found that Busey Bank's overall lending levels reflected excellent responsiveness to the credit needs of its AAs and that Busey Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of the bank's loans reflected excellent penetration throughout the bank's combined AAs. Further, examiners found that, given the product lines offered by Busey Bank, its distribution of loans to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes. Examiners noted that Busey Bank was a significant home mortgage and small business lender throughout its combined AAs, as well as a leader in community development lending. Examiners also noted that Busey Bank exhibited an excellent record of serving the credit needs of LMI individuals, very small businesses, and the most economically disadvantaged areas of its AAs, including through extensive use of flexible lending programs.

Examiners found that Busey Bank had a significant level of community development investments and grants within its combined AAs and occasionally used complex investments to support community development initiatives. Examiners also found that Busey Bank was a leader in providing community development services, and found that the bank's facilities and delivery systems were readily accessible to all portions of the bank's AAs. In addition, examiners found that the bank's services, including business hours, did not vary in a way that inconvenienced certain portions of the bank's AAs, particularly LMI census tracts and individuals.

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

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

[38] The Busey Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business and small farm loans as reported under CRA data collection requirements, from January 1, 2013, through June 30, 2015. The evaluation period for community development loans, investments, and services was August 30, 2012, through September 30, 2015.

[39] The Busey Bank Evaluation included a full-scope evaluation of all or parts of the Champaign-Urbana, Illinois Metropolitan Statistical Area ("MSA"); the Bloomington-Pontiac, Illinois Combined Statistical Area; the Peoria, Illinois MSA; the Indianapolis-Carmel-Anderson, Indiana MSA; and the Cape Coral-Fort Myers, Florida MSA. Limited-scope evaluations were performed of all or parts of the Decatur, Illinois MSA; the Shelby County, Illinois Non-MSA; the North Port-Sarasota-Bradenton, Florida MSA; and the Punta Gorda, Florida MSA. Busey Bank entered the St. Louis, Missouri-Illinois Multistate MSA in 2016, after the Busey Bank Evaluation was completed.

FBC's Efforts since the Busey Bank Evaluation

FBC states that, since the Busey Bank Evaluation, Busey Bank has maintained its high standards with respect to community engagement. FBC notes that in 2017, Busey Bank formed a Fair and Responsible Banking Department within its Risk Management Division that is responsible for driving the bank's CRA efforts within its AAs and managing the bank's fair lending program. FBC represents that Busey Bank's employees have continued to support various community initiatives, with a focus on affordable housing, financial literacy, and economic development. Further, FBC represents that Busey Bank offers a variety of loan products designed to assist LMI borrowers through features such as down-payment assistance, grants, and forgivable second mortgages.

In addition, FBC states that Busey Bank has strengthened its small business lending since the Busey Bank Evaluation. For example, FBC represents that Busey Bank was one of the largest providers of U.S. Small Business Administration loans in the St. Louis area during 2016 and 2017. FBC also represents that Busey Bank was recognized by a local publication in 2017 as one of the best banks in the St. Louis area for providing services and resources to small business owners.

CRA Performance of Ed Bank

Ed Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 22, 2017 ("Ed Bank Evaluation").[40] The bank received "High Satisfactory" ratings for the Lending Test and the Service Test, and the bank received a "Low Satisfactory" rating for the Investment Test.[41]

Examiners concluded that Ed Bank's lending levels reflected good responsiveness to the credit needs of the bank's AA. Examiners found that the bank made a substantial majority of its small business, small farm, and home loans within its AA, and the geographic distribution of the bank's loans reflected good penetration throughout the bank's AA. Examiners also found that, given the product lines offered by Ed Bank, its distribution of lending by borrower income reflected good penetration among retail customers of different income levels and business customers and farms of different sizes. Examiners concluded that Ed Bank had an excellent record of making home mortgage loans to LMI borrowers, and the bank was a leader in making community development loans within its AA.

Examiners found that Ed Bank's community development investments showed adequate responsiveness to the credit needs of the bank's AA. Examiners noted that the bank occasionally used innovative and/or complex investments that supported community development initiatives. Examiners noted that Ed Bank provided a relatively high level of community development services, including financial education resources and homebuyer workshops. In addition, examiners noted that the bank's services did not vary in a way that inconvenienced portions of the bank's AA, particularly LMI census tracts and individuals.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Busey Bank's and Ed Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed

[40] The Ed Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, from January 1, 2014, through December 31, 2016. The evaluation period for community development lending, investments, and services was July 28, 2014, through May 22, 2017.

[41] The Ed Bank Evaluation included an evaluation of the bank's sole AA, which consists of parts of the St. Louis, Missouri-Illinois Multistate MSA.

and approved the Bank Merger Act application related to the proposal and, in doing do, considered adverse comments that were similar to the comments submitted to the Board on the BHC Act application. The Board has considered the results of the most recent consumer compliance examinations of Busey Bank and Ed Bank conducted by FDIC examiners, which included reviews of the banks' compliance management programs and the banks' compliance with consumer protection laws and regulations. The Board has taken this information, as well as the CRA performance records of Busey Bank and Ed Bank, into account in evaluating the proposal, including in considering whether FBC has the experience and resources to ensure that Busey Bank would help meet the credit needs of the communities within its AAs following the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. FBC represents that, following consummation of the bank merger, the combined bank would retain the full range of products and services currently offered by Busey Bank and Ed Bank. FBC represents that customers of Ed Bank would gain access to new products and services, including Busey Bank's health savings accounts, insured cash sweep services, and person-to-person mobile banking services. In addition, FBC represents that customers of Busey Bank would benefit by receiving access to, among other things, mortgage lending products currently offered by Ed Bank, including the MyCommunity Home Loan product, which is specifically designed to meet the needs of LMI borrowers and communities. FBC represents that customers of both banks would benefit from a larger branch and ATM network.

FBC represents that Busey Bank would continue to utilize its current products, programs, and procedures, along with those adopted from Ed Bank, to meets its obligations under the CRA. FBC further represents that it would work together with existing partners of Busey Bank and Ed Bank, including community groups, in order to achieve Busey Bank's goals for the bank's CRA and fair lending programs.

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 FBC, 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

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[42]

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

[42] 12 U.S.C. § 1842(c)(7).

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.[43] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[44]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in total assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[45]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in total assets and a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.[46] 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 FBC with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection

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

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

45 *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.

46 FBC and Ed Corp both offer a range of retail and commercial banking products and services. FBC 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.

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 Chicago, acting under delegated authority.

By order of the Board of Governors, effective January 10, 2019.

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

Ann E. Misback
Secretary of the Board

CenterState Bank Corporation
Winter Haven, Florida

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2019-06 (March 11, 2019)

CenterState Bank Corporation ("CenterState"), Winter Haven, Florida, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire and merge with National Commerce Corporation ("Commerce") and thereby indirectly acquire Commerce's subsidiary bank, National Bank of Commerce ("Commerce Bank"), both of Birmingham, Alabama. Following the proposed acquisition, Commerce Bank would be merged into CenterState's subsidiary bank, CenterState Bank, National Association ("CenterState Bank"), Winter Haven.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 65166 (December 19, 2018)).[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.

CenterState, with consolidated assets of approximately $12.3 billion, is the 125th largest insured depository organization in the United States.[5] CenterState controls approximately $9.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] CenterState controls CenterState Bank, which operates in Florida, Alabama, and Georgia.[7] CenterState is the 17th largest insured depository organization in Florida, controlling deposits of approximately $8.4 billion, which represent 1.4 percent of deposits in that state. CenterState is the 51st largest insured depository organization in Alabama, controlling deposits of approximately $239.8 million, which represent less than 1 percent of deposits in that state. CenterState is the 25th largest insured depository organization in Georgia, controlling deposits of approximately $943.7 million, which represent less than 1 percent of deposits in that state.

Commerce, with consolidated assets of approximately $4.2 billion, is the 258th largest insured depository organization in the United States. Commerce controls approximately $3.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Commerce controls Commerce Bank, which operates in Alabama, Florida, and Georgia. Commerce is the 13th largest insured depository organization in Alabama, controlling deposits of approximately $1.2 billion, which represent 1.2 percent of deposits in that state. Commerce is the 43rd largest insured depository organization in Florida, controlling deposits of approximately $1.4 billion, which represent less than 1 percent of deposits in that state. Commerce is the 27th largest insured depository organization in Georgia, controlling

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 The merger of Commerce Bank into CenterState Bank is subject to approval by the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). *See* 12 U.S.C. § 1828(c).
4 12 CFR 262.3(b).
5 Unless otherwise noted, national asset data are as of December 31, 2018, and deposit, ranking, and market-share data are as of September 30, 2018.
6 Insured depository institutions include commercial banks, savings associations, and savings banks.
7 State deposit data are as of June 30, 2018.

deposits of approximately $780.4 million, which represent less than 1 percent of deposits in that state.

On consummation of the proposal, CenterState would become the 103rd largest insured depository organization in the United States, with consolidated assets of approximately $16.4 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. CenterState would control consolidated deposits of approximately $12.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Alabama, CenterState would become the 10th largest insured depository organization, controlling deposits of approximately $1.4 billion, which would represent approximately 1.4 percent of the total deposits of insured depository institutions in that state. In Florida, CenterState would become the 16th largest insured depository organization, controlling deposits of approximately $9.8 billion, which would represent approximately 1.7 percent of the total deposits of insured depository institutions in that state. In Georgia, CenterState would become the 17th largest insured depository organization, controlling deposits of approximately $1.7 billion, which would represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.[8] Section 3(d) also provides that the Board (1) may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[9] (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 (“CRA”)[10] and the applicant’s record of compliance with applicable state community reinvestment laws;[11] and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[12] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

For purposes of the BHC Act, the home state of CenterState is Florida, and Commerce Bank is located in Alabama, Florida, and Georgia. CenterState is well capitalized and well managed under applicable law. The statutory minimum age requirements of Alabama and Georgia have been met because Commerce Bank has been in existence in Alabama and

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8 12 U.S.C. § 1842(d)(1)(A). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. *See* 12 U.S.C. § 1841(o)(4).

9 12 U.S.C. § 1842(d)(1)(B).

10 12 U.S.C. § 2901 *et seq*.

11 12 U.S.C. § 1842(d)(3).

12 12 U.S.C. § 1842(d)(2)(A).

13 12 U.S.C. § 1842(d)(2)(B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7).

Georgia for more than five years.[14] CenterState Bank also has an "Outstanding" rating under the CRA.

On consummation of the proposed transaction, CenterState would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Alabama and Georgia each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[15] In each state, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[16] The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.[17]

CenterState and Commerce have subsidiary banks that compete directly in ten banking markets in Alabama, Florida, and Georgia. The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits of insured depository institutions in each market ("market deposits") that CenterState would control;[18] the concentration levels of market deposits and the increase in these levels in each market, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[19] the number of competitors that would remain in each market; and other characteristics of each market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in each of the banking markets in which CenterState Bank and Commerce Bank compete. On consummation, one banking market would remain highly concentrated, eight banking markets would remain moderately concentrated, and one banking market would remain unconcentrated, as measured by the

14 Ala. Code § 5-13B-23(c) (five years); Ga. Code § 7-1-628.3(b) (three years).

15 Ala. Code § 5-13B-23(b); Ga. Code § 7-1-628.3(a).

16 12 U.S.C. § 1842(c)(1)(A).

17 12 U.S.C. § 1842(c)(1)(B).

18 Unless otherwise indicated, state deposit and market share data are based on calculations in which the deposits of thrift institutions are included at 50 ercent. 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 FinancialGroup,* 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 ercent weighted basis. *See, e.g., First Hawaiian, Inc*., 77 *Federal Reserve Bulletin* 52 (1991).

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

HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in these banking markets.[20]

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[21] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, 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.

CenterState, Commerce, and their subsidiary depository institutions are 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.[22] The asset quality, earnings, and liquidity of both CenterState Bank and Commerce Bank are consistent with approval, and CenterState 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.

[20] These banking markets and the competitive effects of the proposal in these markets are described in the Appendix.

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

[22] To effect the transaction, each share of Commerce common stock would be converted into the right to receive shares of CenterState common stock, based on an exchange ratio. However, any fractional shares of CenterState common stock that would result from this conversion would be exchanged for cash. CenterState has the financial resources to effect the proposed transaction.

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

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

The Board also has considered CenterState's plans for implementing the proposal. CenterState 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. CenterState would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, CenterState's management has the experience and resources to operate the combined organization in a safe and sound manner, and CenterState plans to integrate Commerce's existing management and personnel in a manner that augments CenterState's management.[23]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[24] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal bank 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 operations,[25] and requires the appropriate federal bank supervisory agency to assess a depository institution's record of helping to meet the credit needs of its

[23] Following consummation of the proposed transaction, the chairman of Commerce would become the chief executive officer of CenterState Bank, and the president and chief executive officer of Commerce would become the chief financial officer of CenterState and CenterState Bank. In addition, three directors of Commerce would be added to the boards of directors of CenterState and CenterState Bank, and one director of Commerce Bank would be added to the board of directors of CenterState Bank.

[24] 12 U.S.C. § 1842(c)(2).

[25] 12 U.S.C. § 2901(b).

entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[26]

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

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

Public Comments on the Proposal

The Board received comments on the proposal from one commenter. The commenter alleged disparities in CenterState Bank's home mortgage origination and denial rates in certain markets for minority applicants compared to white applicants based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").[27] Referencing a specific consumer complaint, the commenter also alleged that CenterState Bank has a history of inadequately responding to complaints from customers acquired through mergers. The commenter expressed concern that CenterState Bank would close branches and become less locally accountable upon consummation of the proposal and asserted that the proposal would not provide a public benefit.

Businesses of the Involved Institutions and Response to the Public Comments

Through their networks of branches, CenterState Bank and Commerce Bank offer deposit, loan, trust, and wealth management products and services to retail and commercial customers.

In response to the commenter's allegations, CenterState asserts that it has a long and positive history of serving the needs, including lending needs, of the communities in its geographic footprint. CenterState contends that the commenter's selective focus on HMDA data from five markets lacks context about the bank's lending record and activities in these markets. CenterState asserts that a significant proportion of its branches are in LMI census tracts, the proportion of its mortgage originations is generally consistent with that of its peers and the demographics of the communities it serves, and its employees volunteer with organizations that serve minority and LMI borrowers. In addition, CenterState asserts that CenterState Bank made mortgage lending a central line of business only recently in 2016, so the bank's originations in 2017 were lower compared to 2018. CenterState also notes that CenterState Bank recently received an overall "Outstanding" CRA rating.

In response to the commenter's allegation that CenterState Bank has mishandled complaints from customers acquired through mergers, CenterState notes that it received only a limited number of complaints from the tens of thousands of customers acquired

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[26] 12 U.S.C. § 2903.

[27] 12 U.S.C. § 2801 *et seq.*

through the specific merger referenced in the comments. CenterState states that CenterState Bank has a comprehensive system for serving customers acquired through merger, including informing new customers of the process of transitioning to CenterState Bank and providing customer service representatives who can answer questions by phone or in person at CenterState Bank branches, and a complaint management program that tracks customer complaints, including those received through social media. CenterState asserts that CenterState Bank is committed to responding to customer complaints in a timely and thoughtful manner and to gaining insight into how to improve internal procedures and training. CenterState indicates that CenterState Bank has increased the number of telephone lines and staff available to handle questions from customers acquired by merger.

Regarding the commenter's concern that CenterState Bank would close branches upon consummation of the proposal and that the proposal would result in less local accountability, CenterState represents that CenterState Bank does not anticipate closing any branches in connection with the proposal and that CenterState Bank focuses on the needs of local markets. In addition, CenterState states that one of the bank's core values is to be driven by local markets and that employees are encouraged to make decisions with their communities' best interests at stake.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor, which in this case is the OCC with respect to both institutions.[28] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[29] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of a large insured depository institution, such as CenterState Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an 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 HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the

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

[29] 12 U.S.C. § 2906.

distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[30] (4) the institution's community development lending, including the number and 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.[31] The Investment Test applicable to large institutions evaluates the number and amounts of qualified investments that benefit their AAs, and the Service Test evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[32] Intermediate small banks, such as Commerce Bank, are subject to the Lending Test, as well as a community development test ("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.[33]

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

CRA Performance of CenterState Bank

CenterState Bank was assigned an overall "Outstanding" rating at its most recent CRA Performance Evaluation by the OCC, as of May 14, 2018 ("CenterState Bank Evaluation").[35] The bank received "Outstanding" ratings for the Lending Test and Service Test and a "Low Satisfactory" rating for the Investment Test.[36] Examiners gave significant consideration to CenterState Bank's performance in the Lakeland-Winter Haven MSA.

Overall, examiners found that CenterState Bank's lending activity reflected good responsiveness to credit needs in its AAs for mortgages and small business loans, and that the bank's lending within its AAs was excellent. Examiners also found that the geographic distribution of loans reflected excellent penetration through the bank's AAs and that the borrower distribution reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners determined that

[30] 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).

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

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

[33] 12 CFR 228.26(c).

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

[35] The CenterState Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending activity reported under HMDA and small business lending activity reported under the CRA for the full calendar years of 2015, 2016, and 2017. The evaluation period for community development loans, qualified investments, and community development services was from April 6, 2015, through April 30, 2018.

[36] The CenterState Bank Evaluation included a full-scope review of the Lakeland-Winter Haven Metropolitan Statistical Area ("MSA"), the Miami-Fort Lauderdale-West Palm Beach MSA, the Ocala MSA, and the Putnam County non-MSA. Limited-scope evaluations were performed for the bank's other AAs.

CenterState Bank was a leader in making community development loans and used innovative and flexible lending practices to meet the credit needs of its communities. Examiners noted that CenterState Bank had an adequate level of qualified investments that exhibited good responsiveness to credit and community economic development needs. In addition, examiners found that CenterState Bank provided excellent retail banking services and was a leader in providing community development services.

In the Orlando-Kissimee-Sanford MSA, an area of concern to the commenter, examiners determined that CenterState Bank had good performance for mortgage lending by income and geography, good performance for small business lending, and excellent performance for small business lending by geography. Examiners noted that the geographic distribution of home mortgage loans was excellent in this MSA, and the bank's strong lending in this MSA had a significant positive impact on the bank's overall rating.

In the Miami-Fort Lauderdale-West Palm Beach MSA, another area of concern to the commenter, examiners found that CenterState Bank had an excellent distribution of home mortgage loans, based on excellent home purchase lending and excellent home refinance lending. Although examiners noted that CenterState Bank's overall loan volume in this MSA was low, they found the penetration of loans in LMI geographies was excellent. Examiners determined that the geographic distribution of small business loans in this MSA was excellent and that the distribution of home purchase and home refinance loans was adequate.

In the Tampa-St. Petersburg-Clearwater MSA, another area cited by the commenter, examiners found that home mortgage lending was good overall. Examiners noted that home mortgage lending by income and geography in the MSA was adequate and that small business lending by geography was excellent.

In the Jacksonville MSA, another area identified by the commenter, examiners found that the volume of home mortgage loans was insufficient to provide any meaningful analysis. However, examiners noted that small business lending by geography in the MSA was excellent. Examiners also noted that lending to small businesses was good, and community development lending in this MSA was strong.

In the Lakeland-Winter Haven MSA, the final area identified by the commenter, examiners found that CenterState Bank's lending activity reflected good responsiveness to credit needs. Examiners determined that the level of home mortgage and small business lending in the MSA was good. Examiners also found that the geographic distribution of home mortgage loans in the MSA was good. Examiners noted that home purchase and refinance lending in LMI geographies in the MSA was good and that home improvement lending in LMI geographies was excellent. Examiners also found that the distribution of home mortgage loans by borrower in the MSA was good.

In all of its AAs, examiners found that CenterState Bank had an adequate level of qualified community development investments that exhibited good responsiveness to credit and community economic development needs. Examiners also found that the bank occasionally used complex investments to support community development initiatives. Examiners determined that CenterState Bank's branches were accessible to geographies and individuals of different income levels. In addition, examiners concluded that acquisition and merger activity by CenterState Bank did not negatively impact the bank's branch distribution. Examiners found that CenterState Bank's hours and services offered throughout the bank's AAs did not vary in a way that inconvenienced LMI individuals.

CRA Performance of Commerce Bank

Commerce Bank received an overall rating of "Satisfactory" at its most recent CRA Performance Evaluation by the OCC, as of November 16, 2015 ("Commerce Bank Evaluation").[37] The bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.[38]

Examiners found Commerce Bank's lending in its AAs to be satisfactory and that the bank originated a majority of its loans inside its AAs. Examiners also found that Commerce Bank achieved reasonable penetration for lending to borrowers of different incomes and reasonable dispersion for geographic distribution of lending within its AAs.

Examiners found that Commerce Bank adequately responded to community development needs in its AAs through a combination of loans, investments, and services. Examiners also found that the bank had demonstrated a commitment to its community by financing community development organizations that operate in the community and participating with various committees and boards that provide affordable housing or community services to LMI individuals.

Views of the OCC

In its review of the proposal, the Board consulted with the OCC regarding the CRA, consumer compliance, and fair lending record of CenterState Bank. The Board has also considered the results of the most recent consumer compliance examinations of CenterState Bank and Commerce Bank conducted by the OCC, which included reviews of the banks' compliance management programs and compliance with consumer protection laws and regulations.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served.[39] CenterState represents that, following consummation of the proposal, CenterState Bank would not discontinue any products or services currently offered by CenterState Bank or Commerce Bank. CenterState asserts that existing customers of Commerce Bank and CenterState Bank would benefit from a more extensive network of branches and ATMs, and Commerce Bank's existing customers would benefit from access to an expanded array of products and services, including deposit products and mobile banking services designed for public employees, seniors, students, and small businesses. CenterState maintains that customers of Commerce Bank would benefit from a broader range of mortgage loans offered by CenterState Bank, including mortgage loans for affordable housing.

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[37] The Commerce Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. The Commerce Bank Evaluation reviewed residential mortgage loans from January 1, 2012, through June 30, 2015, and community development activities from November 15, 2012, to November 16, 2015.

[38] The Commerce Bank Evaluation included a review of the bank's AAs in Alabama and Florida, which included full-scope examinations of the Birmingham MSA AA and the Huntsville AA.

[39] The commenter asserted that the proposal would not produce a benefit to the public.

CenterState represents that, following consummation of the proposal, CenterState Bank would maintain a high level of community development lending, investment, services, and other CRA activities throughout the combined organization's service areas. CenterState also represents that the combined bank would continue to expand its mortgage and small business lending to and community development, investment, and service activities for LMI and minority borrowers and communities. CenterState asserts that CenterState Bank is committed to working closely with community leaders, small business owners, members of nonprofit organizations, and residents in its AAs to provide information about the CRA services it offers and to assess the community development needs in its AAs. CenterState maintains that CenterState Bank's staff would continue to provide financial expertise to non-profit organizations and operate financial literacy workshops for LMI customers.

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, confidential supervisory information, information provided by CenterState, 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 determines that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[40]

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.[41] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[42]

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

[40] 12 U.S.C. § 1842(c)(7).

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

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

cant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[43]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in total assets and a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.[44] 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.[45] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by CenterState with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good

[43] *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.

[44] As noted, through their subsidiary banks, CenterState and Commerce both offer a range of retail and commercial banking products and services. CenterState 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.

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

cause by the Board or the Federal Reserve Bank of Atlanta, acting under delegated authority.

By order of the Board of Governors, effective March 11, 2019.

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

Margaret McCloskey Shanks
Secretary of the Board

Appendix

CenterState and Commerce banking markets consistent with board precedent and DOJ Bank Merger Guidelines (data as of June 30, 2018)

Bank	Rank	Amount of deposits	Market deposit shares (%)	Resulting HHI	Change in HHI	Remaining number of competitors
Auburn/Opelika, Alabama – Lee County, Alabama (less the portion that is within 12 road miles of Phenix City, Alabama or Columbus, Georgia).						
CenterState Pre-Consummation	5	$171.3M	6.16			
Commerce	11	$111.5M	4.01			
CenterState Post-Consummation	3	$282.8M	10.17	1220	49	17
Daytona Beach Area, Florida – Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona of Volusia County; the town of Astor of Lake County, all in Florida.						
CenterState Pre-Consummation	12	$198.1M	2.09			
Commerce	15	$123.8M	1.31			
CenterState Post-Consummation	8	$322.0M	3.4	1456	5	20
Indian River County, Florida						
CenterState Pre-Consummation	12	$114.8M	2.53			
Commerce	11	$130.6M	2.89			
CenterState Post-Consummation	9	$245.4M	5.42	1063	15	16
Jacksonville Area, Florida – Baker, Clay, Duval, and Nassau counties; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, all in Florida; the city of Folkston in Charlton County, Georgia.						
CenterState Pre-Consummation	15	$189.5M	0.38			
Commerce	13	$344.6M	0.7			
CenterState Post-Consummation	10	$534.2M	1.08	2707	1	34
North Lake/Sumter Area, Florida – Sumter and Lake counties (less the towns of Astor, Clermont, and Groveland), both of Florida.						
CenterState Pre-Consummation	13	$93.4M	1.48			
Commerce	15	$72.4M	1.14			
CenterState Post-Consummation	10	$165.8M	2.62	1313	3	17
Saint Augustine Area, Florida – St. Johns County (less the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings), Florida.						
CenterState Pre-Consummation	4	$235.3M	11.4			
Commerce	10	$95.7M	4.64			
CenterState Post-Consummation	3	$331.1M	16.03	1274	105	13
Orlando Area, Florida – Orange, Osceola, Seminole, and the western half of Volusia counties; the towns of Clermont and Groveland in Lake County, all in Florida.						
CenterState Pre-Consummation	14	$757.7M	1.53			
Commerce	20	$271.8M	0.55			
CenterState Post-Consummation	11	$1,029.5M	2.08	1285	2	43

(continued on next page)

Appendix—*continued*

CenterState and Commerce banking markets consistent with board precedent and DOJ Bank Merger Guidelines (data as of June 30, 2018)—*continued*

Bank	Rank	Amount of deposits	Market deposit shares (%)	Resulting HHI	Change in HHI	Remaining number of competitors
Sarasota Area, Florida – Manatee, Sarasota (less the portion that is both east of the Myakka River and south of Interstate 75, which includes the towns of North Port), the peninsular portion of Charlotte west of the Myakka River (including the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida); Gasparilla Island (including the town of Boca Grande) in Lee County, all in Florida.						
CenterState Pre-Consummation	13	$482.7M	2.31			
Commerce	21	$204.5M	0.98			
CenterState Post-Consummation	8	$687.2M	3.29	932	5	35
Tampa Bay Area, Florida – Hernando, Hillsborough, Pinellas, and Pasco counties, all in Florida.						
CenterState Pre-Consummation	15	$854.8M	1.02			
Commerce	34	$146.7M	0.17			
CenterState Post-Consummation	15	$1,001.5M	1.19	1194	0	54
Atlanta, Georgia – Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Walton, and Hall (less the town of Clermont) counties; the towns of Auburn and Winder in Barrow County and Luthersville in Meriwether County, all in Georgia.						
CenterState Pre-Consummation	23	$597.5M	0.35			
Commerce	21	$780.4M	0.46			
CenterState Post-Consummation	16	$1,377.9M	0.81	1546	0	82

Order Issued Under Federal Reserve Act

Regions Bank
Birmingham, Alabama

Order Approving the Establishment of Branches
FRB Order No. 2019-03 (February 5, 2019)

Regions Bank, a state member bank subsidiary of Regions Financial Corporation, both of Birmingham, Alabama, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")[1] and the Board's Regulation H[2] to establish branches in Georgia, Illinois, Missouri, Tennessee, and Texas, as set forth in Appendix A.[3]

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

Regions Financial Corporation, with total assets of $124.8 billion, is the 33rd largest depository organization in the United States, controlling approximately $93.5 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] Regions Bank operates in 15 states through 1,477 branches, and the bank's main office is in Birmingham, Alabama.[6]

Under section 208.6 of the Board's Regulation H,[7] which implements section 9 of the FRA, the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its

1 12 U.S.C. § 321.

2 12 CFR part 208.

3 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. *See* 12 U.S.C. § 321. 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)(2).Regions Bank has branches in Georgia, Illinois, Missouri, Tennessee, and Texas and is permitted to establish additional branches under each state's laws. *See* Ga. Code Ann. § 7-1-628.6; 205 Ill. Comp. Stat. 5/21.4; Tenn. Code Ann. §§ 45-2-614 and 45-2-1412; Mo. Rev. Stat. § 362.107; and Tex.Fin.CodeAnn. § 203.006.

4 12 CFR 262.3(b).

5 Total assets, national asset ranking, and national deposit data are as of September 30, 2018, and state deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

6 Regions Bank has operations in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas.

In Georgia, Regions Bank is the sixth largest depository organization, with 121 branches, controlling approximately $6.8 billion in deposits, which represent approximately 2.7 percent of the total amount of deposits in that state.

In Illinois, Regions Bank is the 25th largest depository organization, with 49 branches, controlling approximately $2.2 billion in deposits, which represent approximately 0.5 percent of the total amount of deposits in that state.

In Missouri, Regions Bank is the ninth largest depository organization, with 61 branches, controlling approximately $2.5 billion in deposits, which represent approximately 1.5 percent of the total amount of deposits in that state.

In Tennessee, Regions Bank is the second largest depository organization, with 221 branches, controlling approximately $18.7 billion in deposits, which represent approximately 12.1 percent of the total amount of deposits in that state.

In Texas, Regions Bank is the 24th largest depository organization, with 78 branches, controlling approximately $3.6 billion in deposits, which represent approximately 0.4 percent of the total amount of deposits of insured depository institutions in that state.

7 12 CFR 208.6(b).

management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");[8] and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.[9] The Board has considered the branch applications in light of these factors and the public comment received on the proposal.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Regions Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Regions Bank, and the comment received on the proposal. Regions Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Regions Bank are consistent with approval, and Regions Bank appears to have adequate resources to absorb the costs of the proposal.

In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed Regions Bank's proposed investment in the branches and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.[10]

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

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

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.[11] In its evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,[12] and requires the appropriate federal financial supervisory agency to assess a depository institution's record

[8] 12 U.S.C. § 2901 *et seq.*
[9] 12 CFR 208.21(a).
[10] 12 CFR 208.21(a).
[11] 12 CFR 208.6(b)(3).
[12] 12 U.S.C. § 2901(b).

of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank branching proposals.[13]

In addition, the Board considers the bank's overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide 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 Regions Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Regions Bank, and the public comment received on the proposal.

Public Comment on the Proposal

One commenter objected to the proposal, alleging that Regions Bank discriminates against African Americans and "redlines" African American neighborhoods in the Houston and Dallas areas, both in Texas.[14] Specifically, the commenter alleged that Regions Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its outreach and banking activities in predominantly white neighborhoods and to white individuals and white-owned businesses in Houston and Dallas. The commenter also alleges that Regions Bank disfavors certain African American neighborhoods in Houston and/or Dallas with respect to its lending, marketing, branching, and community development activities and in other respects.

Business of the Applicant and Response to Comment

Regions Bank offers a broad range of retail and commercial banking products to consumers and businesses through its network of branches. The products and services include commercial, residential, agricultural, and consumer loans, personal checking and savings accounts, business checking and savings accounts, money market accounts, cash management products and services, foreign exchange services, credit cards, merchant services, and wealth management services.

In response to the commenter's allegations, Regions Bank asserts that it is committed to making financial products and services available to all prospective and existing customers on a fair and responsible basis and states that responsible lending principles are built into Regions Bank's corporate values. Regions Bank notes that it has established loan and credit policies and procedures to assure consistent, fair, and accurate processes. Regions Bank represents that it offers all products to all applicants without regard to any prohibited basis, and it is committed to the fair and equal treatment of all applicants and borrowers. Regions Bank further represents that it engages in diverse marketing and outreach campaigns to achieve lending to minority groups.

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[13] 12 U.S.C. § 2903.

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

Record of Performance under the CRA

In evaluating the CRA performance of the involved institution, the Board generally considers the institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal supervisor, which in this case is the Federal Reserve Bank of Atlanta ("Reserve Bank").[15] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[16] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution, such as Regions Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates an 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 Act ("HMDA"),[17] 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;[18] (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.[19] Large institutions also are 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.[20]

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

[16] 12 U.S.C. § 2906.

[17] 12 U.S.C. § 2801 *et seq.*

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

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

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

CRA Performance of Regions Bank

Regions Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Reserve Bank, as of April 1, 2016 (“Regions Bank Evaluation”).[21] The bank received a “High Satisfactory” rating for each of the Lending Test, Investment Test, and Service Test.[22]

Examiners found that Regions Bank’s overall lending activity was responsive to the credit needs in all of its assessment areas, and there were no conspicuous gaps in lending activity by income category. Examiners noted that the bank originated a substantial majority of its loans inside its AAs. Examiners found that the distribution of the bank’s loans to retail customers of different income levels and business customers of different sizes was good and that the bank’s overall geographic distribution of HMDA and small business loans reflected good penetration throughout LMI areas. Examiners also found that the bank made an adequate level of community development loans, the majority of which were for affordable housing and community services, and that the bank was responsive to the community development needs throughout its AAs.

Examiners rated Regions Bank’s performance in Texas under the Lending Test as “Low Satisfactory.” Examiners found that the distribution of the bank’s borrowers reflected good penetration among individuals of different income levels and businesses of different sizes and that the geographic distribution of the bank’s loans reflected adequate penetration throughout Texas. Further, examiners found that the bank made an adequate level of community development loans in Texas and was responsive to community development and credit needs. In Houston, an area of concern for the commenter, examiners concluded that the bank’s lending performance was adequate and noted that the bank made an adequate level of community development loans. Examiners found that the bank’s lending performance in Dallas, another area of concern for the commenter, exceeded the bank’s state-wide lending performance.

Examiners found that, overall, Regions Bank made a significant level of qualified community development investments in response to community development needs. Examiners made a similar finding with respect to the bank’s investment performance in Texas, which examiners rated as “High Satisfactory.” Examiners noted that the majority of investments in Texas were concentrated in the Austin or Houston AAs and that the bank’s investment performance was good in the Houston AA. In addition, examiners found that the bank’s performance in the Dallas AA exceeded the bank’s state-wide investment performance in Texas, due to the bank’s strong mix of contributions and investments that were responsive to local community development and credit needs.

Examiners found that Regions Bank’s retail delivery systems were reasonably accessible to geographies and individuals of different income levels within the bank’s AAs. Examiners noted that the bank’s opening and closing of branches generally did not adversely affect the accessibility of banking services to LMI geographies and/or individuals. Examiners found that banking services and business hours did not vary in a way that inconvenienced any portion of the bank’s AAs, including LMI geographies and individuals. Moreover, examiners found that the bank provided a high level of community development services that benefited all of its AAs, including Texas.

[21] The Regions Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business lending activities reported by the bank from January 1, 2014, through December 31, 2015. The evaluation period for community development lending, investments, and services was July 1, 2014, through March 31, 2016.

[22] Regions Bank’s AAs are set forth in Appendix B.

Examiners rated Regions Bank's service performance in Texas as "High Satisfactory." In the Houston AA, examiners concluded that, although the bank's branch distribution was weak in LMI geographies, there had been no change in the accessibility of retail services for LMI geographies and/or individuals, and many branches had extended hours, including branches located in LMI geographies. Examiners also found that the bank's delivery services and hours of operation did not vary in a way that inconvenienced LMI geographies or individuals. In addition, examiners found that the bank provided a relatively high level of community development services in the Houston AA. Examiners also concluded that, in the Dallas AA, the bank's service performance was consistent with the bank's statewide service performance.

Regions Bank's Efforts since the Regions Bank Evaluation

Regions Bank represents that, since the Regions Bank Evaluation, it has continued to offer several lending and deposit products that benefit LMI individuals and communities and small businesses. According to Regions Bank, such products include a Regions Business Line of Credit; its "Regions NOW Banking" suite of services, which is designed for unbanked and underbanked customers who prefer a pay-as-you-go approach to managing their finances; and its "Savings Account Secured Loans" and lines of credit that allow borrowers to use their savings accounts as collateral. Regions Bank also represents that it offers affordable mortgage products for LMI borrowers, including some products that require little to no down payment and/or do not require mortgage insurance, thus lowering monthly payments.

Regions Bank represents that it has continued to serve the banking needs in its AAs, including Houston and Dallas, through community development lending, investments, and services since the Regions Bank Evaluation. The bank contends that it has made a number of community development loans, including in the Houston and Dallas markets. Regions Bank represents that it has made a number of community development investments that support organizations focused on LMI and minority individuals and communities, including a grant to an organization that provides essential services to LMI individuals and families in Houston. Regions Bank contends that it engages in marketing and outreach, including targeted radio and advertising campaigns, to achieve lending penetration in LMI and minority census tracts, including those tracts in the Houston and Dallas AAs. In addition, Regions Bank represents that bank employees have actively participated in a variety of volunteer activities in its AAs, including events that target primarily LMI and minority individuals and small business owners, such as an event offering assistance to minority small business owners in Houston.

Additional Supervisory Considerations

In addition to the Regions Bank Evaluation, the Board has considered the results of a 2015 target examination of Regions Bank's Fair Housing Act ("FHA") fair lending program. The Board has also considered the preliminary findings of a more recent FHA examination, which included a redlining review of a number of markets, including the Houston and Dallas AAs. The redlining review included an evaluation of the bank's lending, marketing and outreach, assessment area, and branching within these markets. In addition, the Board has considered Regions Bank's supervisory record with the Consumer Financial Protection Bureau.

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. Regions Bank asserts that the proposed branches would provide economic and employment benefits and a broad range of financial services to the markets they serve. The bank represents that the proposed branches would utilize enhanced technologies and provide expanded services and convenience to customers of the bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA record of Regions Bank, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Regions Bank, 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.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.[23] The Board's approval is specifically conditioned on compliance by Regions Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with this 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.

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

By order of the Board of Governors, effective February 5, 2019.

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

Ann E. Misback
Secretary of the Board

[23] The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the relevant newspapers of general circulation on September 28, 2018. The comment period on each application ended on October 13, 2018. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Appendix A

Branches to be Established by Regions Bank

Georgia Branches

Sandy Plains Branch
Shallowford Road, Just East of Sandy Plains Road
Marietta, Georgia 30062

Suwanee Branch
Intersection of McGinnis Ferry Road and Peachtree Industrial Boulevard
Suwanee, Georgia 30024

Village Shoppes at Windermere Branch
Northwest Corner of Intersection of Old Atlanta Road and Mathis Airport Parkway
Suwanee, Georgia 30024

Illinois Branch

Carbondale Branch
Northeast Corner of Intersection of West Main Street and North Oakland Avenue
Carbondale, Illinois 62901

Missouri Branch

Lemay Branch
Lemay Ferry Road, Just East of Buckley Road
Affton, Missouri 63125

Tennessee Branch

Arlington Branch
Southeast Corner of Intersection of Airline Road and Milton Wilson Boulevard
Arlington, Tennessee 38002

Texas Branch

Longview Main Branch
West Marshall Avenue, Just East of Intersection with South Spur 63
Longview, Texas 75601

Appendix B

The Regions Bank Evaluation included a full-scope review of the bank's AAs within the following: Birmingham, Alabama, Metropolitan Statistical Area ("MSA"); Montgomery, Alabama, MSA; Little Rock, Arkansas, MSA; Miami, Florida, MSA; Tampa, Florida, MSA; Atlanta, Georgia, MSA; Carbondale-Marion, Illinois, MSA; Indianapolis, Indiana, MSA; Waterloo, Iowa, MSA; Southwest Kentucky, Kentucky; Baton Rouge, Louisiana, MSA; New Orleans, Louisiana, MSA; Jackson, Mississippi, MSA; Northern Mississippi, Mississippi; Springfield, Missouri, MSA; Charlotte, North Carolina, MSA; Charleston, South Carolina, MSA; Nashville, Tennessee, MSA; Austin, Texas, MSA; Houston, Texas, MSA; and Augusta-Chattanooga-Columbus-Kingsport-Memphis-St. Louis-Texarkana, MSA.

A limited-scope review was conducted in the bank's AAs within the following: Anniston, Alabama, MSA; Auburn, Alabama, MSA; Coffee-Covington-Escambia, Alabama; Daphne, Alabama, MSA; Decatur, Alabama, MSA; Dothan, Alabama, MSA; Fayette County, Alabama; Florence, Alabama, MSA; Gadsden, Alabama, MSA; Huntsville, Alabama, MSA; Mobile, Alabama, MSA; Northern Alabama; Southern Alabama; Tallapoosa-Talladega, Alabama; Tuscaloosa, Alabama, MSA; Fayetteville, Arkansas, MSA; Fort Smith, Arkansas, MSA; Hot Springs, Arkansas, MSA; Jonesboro, Arkansas, MSA; Northeast Arkansas; Northwest Arkansas; Southern Arkansas; Union County, Arkansas; Daytona, Florida, MSA; Fort Lauderdale, Florida, MSA; Fort Myer, Florida, MSA; Fort Walton, Florida, MSA; Gainesville, Florida, MSA; Homosassa Springs, Florida, MSA; Jacksonville, Florida, MSA; Lakeland, Florida, MSA; Naples, Florida, MSA; Northern Florida; Ocala, Florida, MSA; Okeechobee, Florida; Orlando, Florida, MSA; Palm Bay, Florida, MSA; Panama City, Florida, MSA; Pensacola, Florida, MSA; Punta Gorda, Florida, MSA; Sarasota, Florida, MSA; Tallahassee, Florida, MSA; The Villages, Florida, MSA; West Palm Beach, Florida, MSA; Albany, Georgia, MSA; Athens, Georgia, MSA; Dalton, Georgia, MSA; Elbert and Wilkes counties, Georgia; Gainesville, Georgia, MSA; Jefferson-Jenkins, Georgia; Morgan-Elbert-Wilkes, Georgia; Northeast Georgia; Northwest Georgia; Rome, Georgia, MSA; Savannah, Georgia, MSA; Southwest Georgia; Valdosta, Georgia, MSA; Bloomington, Illinois, MSA; Central Illinois; Champaign, Illinois, MSA; Decatur, Illinois, MSA; Livingston, Illinois, MSA; Peoria, Illinois, MSA; Southeast Illinois; Southern Illinois; Springfield, Illinois, MSA; Bloomington, Indiana, MSA; Clinton-Grant, Indiana; Evansville, Indiana, MSA; Knox-Lawrence, Indiana; Kokomo, Indiana, MSA; Lafayette, Indiana, MSA; Louisville, Indiana, MSA; Terre Haute, Indiana, MSA; Cedar Rapids, Iowa, MSA; Des Moines, Iowa, MSA; Fayette, Iowa; Iowa City, Iowa, MSA; Simpson, Kentucky; Alexandria, Louisiana, MSA; Hammond, Louisiana, MSA; Houma, Louisiana, MSA; Lafayette, Louisiana, MSA; Monroe, Louisiana, MSA; Morehouse, Louisiana; Northwest Louisiana; Shreveport, Louisiana, MSA; Southern Louisiana; Adams-Wilkinson, Mississippi; Central Mississippi; Gulfport, Mississippi, MSA; Hattiesburg, Mississippi, MSA; Northwest Mississippi; Southern Mississippi; Warren, Mississippi; Cape Girardeau, Missouri, MSA; Central Missouri; Columbia, Missouri, MSA; Jefferson City, Missouri, MSA; Lawrence County, Missouri; Southeast Missouri; St. Genevieve-Perry, Missouri; Taney County, Missouri; Macon County, North Carolina; Raleigh, North Carolina, MSA; Columbia, South Carolina, MSA; Greenville, South Carolina, MSA; Hampton County, South Carolina; Hilton Head Island-Bluffton-Beaufort, South Carolina, MSA; McCormick-Barnwell, South Carolina; Spartanburg, South Carolina, MSA; Clarksville, Tennessee, MSA; Cleveland, Tennessee, MSA; Eastern Tennessee; Jackson, Tennessee, MSA; Johnson City, Tennessee, MSA; Knoxville, Tennessee, MSA; Middle Tennessee; Morristown, Tennessee, MSA; Western Tennessee; Cass, Texas; Dallas, Texas, MSA; Fort Worth, Texas, MSA; Longview, Texas, MSA; Nacogdoches-Angelina-Anderson, Texas; and Tyler, Texas, MSA.

Order Issued Under Home Owners' Loan Act

WSFS Financial Corporation
Wilmington, Delaware

Order Approving the Acquisition and Merger of Savings and Loan Holding Companies
FRB Order No. 2019-04 (February 27, 2019)

WSFS Financial Corporation ("WSFS"), Wilmington, Delaware, 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 Beneficial Bancorp, Inc. ("Beneficial"), and thereby indirectly acquire Beneficial Bank, both of Philadelphia, Pennsylvania, following the conversions of Beneficial Bank from a Pennsylvania state savings bank to a federal savings association and Beneficial from a bank holding company to an SLHC.[2] Immediately following the conversions, Beneficial would merge with and into WSFS, and Beneficial Bank would merge with and into WSFS's subsidiary federal savings association, Wilmington Savings Fund Society, FSB ("WSFS Bank"), Wilmington, Delaware.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 55365 (November 5, 2018)).[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 10(e) of HOLA.[5]

WSFS, with consolidated assets of approximately \$7.2 billion,[6] is the 177th largest insured depository organization in the United States, controlling approximately \$5.7 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] WSFS controls WSFS Bank, which operates in Delaware and Pennsylvania. WSFS Bank is the 33rd largest insured depository institution in Pennsylvania, with approximately \$1.2 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

Beneficial, with consolidated assets of approximately \$5.9 billion, is the 198th largest insured depository organization in the United States, controlling approximately \$4.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Beneficial controls Beneficial Bank, which operates in Pennsylvania and New Jersey. Beneficial Bank is the 22nd largest insured depository institution in Pennsylvania, with approximately \$2.9 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

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1 12 U.S.C. § 1467a(e).

2 The Federal Reserve Bank of Philadelphia ("Reserve Bank"), acting under delegated authority, has approved an application by Beneficial under section10(e) of HOLA to become an SLHC upon the conversion of Beneficial Bank to a federal savings association, and the Office of the Comptroller of the Currency ("OCC") has approved an application under section 5 of HOLA (12U.S.C.§1464) by Beneficial Bank to convert to a federal savings association.

3 The OCC has approved an application under section 18(c) of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. § 1828(c)) by WSFS Bank to merge with Beneficial Bank, with WSFS Bank surviving.

4 12 CFR 238.14(c)(2).

5 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

6 National asset and deposit data are as of September 30, 2018.

7 State and market deposit data and all ranking data are as of June 30, 2018.

On consummation of the proposal, WSFS would become the 118th largest insured depository organization in the United States, with consolidated assets of approximately $13.0 billion. WSFS would control deposits of approximately $10 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Pennsylvania, WSFS would become the 19th largest insured depository organization, controlling deposits of approximately $4.1 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Deposit Cap and Interstate Analysis

Section 10(e)(2)(E) of HOLA generally provides that the Board may not approve an application by an SLHC to acquire an insured depository institution in a state other than the SLHC's home state if the SLHC controls, or upon consummation would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.[8]

For purposes of HOLA, Beneficial Bank's home state is Pennsylvania, and WSFS's home state is Delaware. Upon consummation of the proposal, WSFS would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board determines that it is not required to deny the proposal under section 10(e)(2)(E) of HOLA.

In addition, section 10(e)(3) of HOLA prohibits the Board from approving a proposal that would result in the formation of a multiple SLHC that controls savings associations in more than one state.[9] Because the merger of Beneficial Bank with and into WSFS Bank would occur simultaneously with the merger of Beneficial with and into WSFS, WSFS would not control more than one savings association as a result of the proposed transaction and, therefore, the proposal would not result in the formation of a multiple SLHC. Accordingly, in light of all the facts of record, the Board determines that it is not required to deny the proposal under section 10(e)(3) of HOLA.

Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly or that would be in furtherance of any combination or conspiracy to monopolize, or to attempt to monopolize, the savings and loan business in any part of the United States.[10] 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.[11]

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[8] 12 U.S.C. § 1467a(e)(2)(E). A federal savings association's home state is the state in which its home office is located. 12 U.S.C. § 1467a(e)(7)(B)(iii). An SLHC's home state is the state in which the total deposits of all insured depository institution subsidiaries of such company were the greatest on the date on which the company became an SLHC. 12 U.S.C. § 1467a(e)(7)(B)(iv).

[9] 12 U.S.C. § 1467a(e)(3). A multiple SLHC is an SLHC that directly or indirectly controls two or more savings associations. 12 U.S.C. § 1467a(a)(1)(E).

[10] 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

[11] 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

WSFS and Beneficial compete directly in the Philadelphia banking market ("Philadelphia market").[12] The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the relative share of total deposits of insured depository institutions in the market ("market deposits") that WSFS would control;[13] 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");[14] the number of competitors that would remain in the market; 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 Philadelphia market. On consummation of the proposal, the Philadelphia market would remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines.[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, including the Philadelphia 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 Philadelphia 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 HOLA, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] In its evaluation of finan-

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[12] The Philadelphia market is defined as Camden, Cumberland, Gloucester, and Salem counties, New Jersey; Beverly, Bordentown, and Burlington cities, Fieldsboro, Palmyra, and Riverton boroughs, and Bordentown, Burlington, Chesterfield, Cinnaminson, Delanco, Delran, Eastampton, Edgewater Park, Evesham, Florence, Hainesport, Lumberton, Mansfield, Maple Shade, Medford, Moorestown, Mount Holly, Mount Laurel, Riverside, Springfield, and Willingboro townships in Burlington County, New Jersey; Trenton city and Hamilton township in Mercer County, New Jersey; and Bucks, Chester, Delaware, Montgomery and Philadelphia counties, Pennsylvania.

[13] Local deposit and market share data 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).

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

[15] WSFS operates the 19th largest depository institution in the Philadelphia market, controlling approximately $1.2 billion in deposits, which represent 0.7 percent of market deposits. Beneficial operates the 8th largest depository institution in the same market, controlling deposits of approximately $4.2 billion, which represent approximately 2.6 percent of market deposits. On consummation of the proposed transaction, WSFS would become the 6th largest depository organization in the market, controlling deposits of approximately $5.4 billion, which represent approximately 3.3 percent of market deposits. The HHI for the Philadelphia market would increase by 4 points to 935, and 91 competitors would remain in the market.

[16] 12 U.S.C. § 1467a(e)(2).

cial 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 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 operations. In assessing 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.

WSFS, Beneficial, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger of holding companies that is structured as a cash and share exchange with a simultaneous merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of WSFS, Beneficial, and their subsidiary depository institutions are consistent with approval, and WSFS appears to have adequate resources to absorb the 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.[18] The Board has conducted an evaluation of the competence, experience, and integrity of the officers, directors, and principal shareholders of WSFS and WSFS Bank; their record of compliance with laws and regulations; and the record of WSFS and WSFS Bank of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.[19] The Board has reviewed the examination records of WSFS, Beneficial, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by WSFS; 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 the public comment on the proposal.

WSFS, Beneficial, and their subsidiary depository institutions are each considered to be well managed. The directors and senior executive officers of WSFS have knowledge of and experience in the banking sector, and WSFS's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered WSFS's plans for implementing the proposal. WSFS has conducted comprehensive due diligence and is devoting significant financial and other resources to address the post-acquisition integration process for this proposal. WSFS would apply its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, WSFS's management has the experience and resources to operate the combined organiza-

[17] To effect the merger, all outstanding shares of Beneficial common stock would be converted into the right to receive cash from WSFS and shares of WSFS common stock. WSFS has the financial resources to effect the proposed transaction.

[18] *See* 12 U.S.C. § 1467a(e)(2).

[19] *See* 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(2).

tion in a safe and sound manner, and WSFS would integrate Beneficial's existing management and personnel in a manner that augments WSFS's management.[20]

Based on all the facts of record, including WSFS's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of WSFS and Beneficial 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 effects of the transaction on the convenience and needs of the communities to be served.[21] In this evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").[22] 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,[23] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating expansionary proposals.[24]

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of WSFS Bank and Beneficial Bank, the fair lending and compliance records of both depository institutions, the supervisory views of the OCC and Federal Deposit Insurance Corporation ("FDIC"), confidential supervisory information, information provided by WSFS, and the public comment on the proposal.

[20] Three members of Beneficial's board of directors would be appointed to the boards of WSFS and WSFS Bank, and an advisory board would be established with membership that includes current directors of Beneficial's board. Further, Beneficial's Chief Lending Officer would become WSFS's Executive Vice President and Head of Pennsylvania and New Jersey Commercial Lending.

[21] 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).

[22] 12 U.S.C. § 2901 *et seq.*

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

Summary of Public Comment on Convenience and Needs

A commenter objected to the proposal alleging, based on data reported under the Home Mortgage Disclosure Act ("HMDA")[25] for 2017, that WSFS Bank denied home purchase mortgage loans to African American and Latino applicants at significantly higher rates than to white applicants in the Wilmington, Delaware-Maryland-New Jersey Metropolitan Division ("MD") and the Salisbury, Maryland-Delaware Metropolitan Statistical Area ("MSA"). The commenter also raised concerns regarding branch closures anticipated in connection with the proposed mergers.

Businesses of the Involved Institutions and Response to the Public Comment

WSFS Bank offers a variety of deposit and lending products and services to retail and business customers through its branches in Delaware and Pennsylvania. Through its branches in Pennsylvania and New Jersey, Beneficial Bank also offers a variety of deposit and lending products and services to retail and business customers.

WSFS asserts that the disparate denial rates cited by the commenter do not take into account legitimate underwriting factors, such as credit history and existing debt levels. WSFS represents that the loan denials underlying the data were based on determinations that the applications did not satisfy WSFS Bank's underwriting criteria.

WSFS represents it would close a total of 25 WSFS Bank and Beneficial Bank branches in connection with the proposed transaction, primarily because of the proximity of those branches to other branches of the combined bank.[26] WSFS represents that it would comply with the requirements of section 42 of the FDI Act[27] and interagency guidance applicable to branch closures.[28]

Records of Performance under the CRA

In evaluating the CRA performance of involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case are the OCC for WSFS Bank and the FDIC for Beneficial Bank.[29] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[30] 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 financial supervisor of the institution's overall record of lending in its communities.

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[25] 12 U.S.C. § 2801 *et seq*.

[26] In addition, in connection with the proposal, Beneficial Bank has entered into an agreement to sell five of its branches that would not be within the combined bank's planned footprint.

[27] 12 U.S.C. § 1831r-1.

[28] *See* Joint Policy Statement on Branch Closings by Insured Depository Institutions, https://www.federalreserve.gov/boarddocs/press/BoardActs/1999/19990707/r-1036.pdf.

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

[30] 12 U.S.C. § 2906.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as WSFS Bank and Beneficial Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an 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 HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[31] (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.[32] Large institutions also are 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.[33]

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.[34] Consequently, the Board evaluates HMDA data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of WSFS Bank

WSFS Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of August 7, 2017 (the "WSFS Bank Evaluation").[35] WSFS Bank received a "High Satisfactory" rating for the Lending Test, an "Outstanding" rating for the Investment Test, and a "Low Satisfactory" rating for the Service Test.

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[31] 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).

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

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

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

[35] The WSFS Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The Lending Test evaluation period was January 1, 2014, through December 31, 2016, except with respect to community development loans. For community development loans and the Investment and Service Tests, the evaluation period was September 3, 2014, through August 7, 2017. Examiners conducted full-scope reviews of designated geographic areas within three AAs ("full-scope AAs"): (i) the Wilmington, Delaware-Maryland-New Jersey MD, (ii) the Dover, Delaware MSA, and (iii) the Philadelphia, Pennsylvania MD. In addition, examiners conducted limited-scope reviews of the Chester County-Bucks County-Montgomery County, Pennsylvania MSA and the Salisbury, Maryland-Delaware MSA ("limited-scope AAs").

Examiners found that WSFS Bank exhibited an overall excellent level of lending activity in two of its three full-scope AAs, and an adequate level of lending activity in the remaining full-scope AA. Examiners found that the overall geographic distribution of lending activity across the full-scope AAs ranged from adequate to outstanding with respect to home purchase, home improvement, home refinance, and small business loans. In two of its three full-scope AAs, examiners found that the percentage of WSFS Bank's home mortgage loans in LMI geographies in 2014-2016 was equal to or exceeded the percentage of aggregate peer lending in the same geographies. In the remaining full-scope AA, examiners considered the geographic distribution of home mortgage lending in LMI geographies to be adequate-to-good. In addition, examiners considered the percentage of WSFS Bank's small business loans in LMI geographies to be at least adequate in all three of its full-scope AAs. Examiners also noted that WSFS Bank maintained an overall excellent level of community development lending across all three of its full-scope AAs.

Examiners considered WSFS Bank's performance under the Investment Test to be outstanding across all three of its full-scope AAs and excellent or outstanding across its limited-scope AAs. Examiners found that WSFS Bank had an excellent level of qualified investments that were responsive to the credit and community needs of its AAs.

Examiners noted that WSFS Bank maintained an adequate branch distribution system that was reasonably accessible to individuals living in LMI geographies. Examiners found that branch openings and closings generally had not adversely affected the accessibility of WSFS Bank's delivery systems. Examiners considered hours and services offered in its full-scope AAs to be adequate-to-good and noted that WSFS Bank complemented its traditional service delivery methods with online banking, which included bill pay, mobile banking, automated teller machines, bank-by-mail, and 24-hour telephone banking. Finally, examiners noted that WSFS Bank maintained an adequate level of community development services across all three full-scope AAs.

WSFS Bank's Efforts since the WSFS Bank Evaluation

WSFS represents that since the WSFS Bank Evaluation, WSFS Bank has originated or renewed community development loans to support: affordable housing development, the revitalization of LMI communities with redevelopment designations, Community Development Financial Institutions that provide community development loans in WSFS Bank's AAs, and organizations that deliver community services for LMI individuals and communities. WSFS also represents that WSFS Bank has made investments in Low Income Housing Tax Credit Equity funds and mortgage-backed securities collateralized by mortgages to LMI individuals in its AAs. Further, WSFS represents that the bank has continued its participation in community development grant programs, including a program that supports counseling for first-time homebuyers and homeowners facing foreclosure and an educational initiative that aims to improve the educational performance of low-income students. WSFS represents that the bank's employees continue to participate in various initiatives and organizations that provide services to benefit LMI individuals and communities.

CRA Performance of Beneficial Bank

Beneficial Bank was assigned an overall "Outstanding" rating by the FDIC at its most recent CRA performance evaluation, as of July 31, 2017 (the "Beneficial Bank Evaluation").[36] Beneficial Bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment and Service Tests.

Examiners found that Beneficial Bank's lending levels reflected a good level of responsiveness to the credit needs of the bank's AA. Examiners also found that the geographic distribution of loans reflected adequate penetration throughout the AA, while the distribution of borrowers reflected good penetration among retail customers of different income levels and businesses of different sizes. Examiners noted that Beneficial Bank used flexible lending practices to serve the credit needs of its AA and made a relatively high level of community development loans.

Examiners determined that Beneficial Bank had an excellent level of community development investments and grants and noted that the bank exhibited excellent responsiveness to credit and community economic needs. Examiners observed that Beneficial Bank occasionally used innovative and/or complex investments to support community development initiatives.

Examiners found that Beneficial Bank's delivery systems were accessible to essentially all portions of the bank's AA and that the bank was a leader in providing community development services. Examiners further found that Beneficial Bank's opening and closing of branches did not adversely affect the accessibility of the bank's delivery systems and that services offered by Beneficial Bank did not vary in a way that inconvenienced certain portions of the AA, particularly LMI geographies or individuals.

Views of the OCC and the FDIC

In its review of the proposal, the Board considered supervisory information from the OCC and the FDIC regarding the CRA, consumer compliance, and fair lending records of WSFS Bank and Beneficial Bank, respectively. The Board also considered the results of recent consumer compliance examinations of each bank, which included reviews of the banks' compliance with fair lending laws. In addition, the Board consulted with the OCC, which approved the application under section 18(c) of the FDI Act related to the proposal, and in doing so, considered the convenience and needs of the communities served by WSFS Bank and Beneficial Bank, including with respect to the anticipated branch closures, as well as the institutions' records of performance under the CRA.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. WSFS represents that customers of both WSFS Bank and Beneficial Bank would benefit from access to a larger branch network, thereby enhancing customers' access to branch banking services. WSFS further represents that the proposal would increase the access of WSFS Bank's customers to equipment leasing

[36] The Beneficial Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period was May 5, 2014, through July 31, 2017. Examiners conducted a full-scope evaluation of the bank's sole AA, which consists of eight contiguous counties within the Philadelphia-Reading-Camden, Pennsylvania-New Jersey-Delaware-Maryland Combined Statistical Area.

services currently provided by Beneficial Bank, while Beneficial Bank's customers would benefit from access to WSFS Bank's wealth management and Cash Connect services through the combined bank.

Conclusion on Convenience and Needs Considerations

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

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 the insurance risk to the Deposit Insurance Fund.[37] As discussed above, the financial and managerial resources and the future prospects of the combined organization are consistent with approval. The Board has considered the likely effect of the transaction on the resultant depository institution and believes that it is consistent with approval. In view of the current resources and capital of WSFS and Beneficial; the future prospects of the combined organization; the significant financial and other resources being devoted to support the proposed combined organization; the managerial resources of WSFS, Beneficial, and their subsidiary depository institutions; and the likely effect of the transaction on the proposed combined organization, the Board believes that the proposal would not appear likely to materially affect the insurance risk of the Deposit Insurance Fund.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[38] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under HOLA and other applicable statutes. The Board's approval is specifically conditioned on compliance by WSFS with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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[37] 12 U.S.C. § 1467a(e)(2).

[38] A commenter requested that the Board hold public hearings or meetings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 238.14(e),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 a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public hearing. In addition, the request does not demonstrate why written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective February 27, 2019.

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

Ann E. Misback
Secretary of the Board

Orders Issued Under the Bank Merger Act and Federal Reserve Act

Equity Bank
Andover, Kansas

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of Branches
FRB Order No. 2019-02 (January 23, 2019)

Equity Bank, Andover, Kansas, the state member bank subsidiary of Equity Bancshares, Inc. ("Equity Bancshares"), Wichita, Kansas, 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 MidFirst Bank, a federal savings bank subsidiary of Midland Financial Co. ("Midland Financial"), both of Oklahoma City, Oklahoma.[2] In addition, Equity Bank has applied under section 9 of the Federal Reserve Act ("FRA")[3] to establish and operate branches at the locations of the acquired branches of MidFirst Bank.

Under the proposal, Equity Bank would assume approximately $100 million of MidFirst Bank's $8.3 billion in deposits, as well as acquire approximately $7 million of MidFirst Bank's loans and related assets.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board's Rules of Procedure.[4] The time for 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 and the FRA. 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.

Equity Bancshares, with consolidated assets of approximately $3.7 billion, is the 268th largest insured depository organization in the United States, controlling deposits of approximately $2.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions[5] in the United States.[6] Equity Bancshares controls Equity Bank, which has offices in Arkansas, Kansas, Missouri, and Oklahoma. Equity Bank is the 37th largest insured depository institution in Oklahoma, with approximately $442.2 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.[7]

Midland Financial, with consolidated assets of approximately $15.4 billion, is the 103rd largest insured depository organization in the United States, controlling deposits of approximately $8.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Midland Financial controls

1 12 U.S.C. § 1828(c).

2 In particular, Equity Bank seeks to acquire the branches of MidFirst Bank located at 1754 North Academy Street, Guymon, Oklahoma ("North Academy Branch"); 2602 North Highway 64, Guymon, Oklahoma ("North Highway Branch"); and 110 East 1st Street, Cordell, Oklahoma.

3 12 U.S.C. § 321.

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

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

6 Nationwide asset and deposit data are as of June 30, 2018.

7 State deposit data are as of June 30, 2018.

MidFirst Bank, which has offices in Arizona, California, Colorado, Oklahoma, and Texas. MidFirst Bank is the third largest insured depository institution in Oklahoma, with approximately $5.2 billion in deposits, which represent 6 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, Equity Bancshares would remain the 268th largest depository organization in the United States, with consolidated assets of approximately $3.7 billion. Equity Bancshares would control approximately $2.7 billion in deposits, representing less than 1 percent of the total deposits of insured depository institutions in the United States. Equity Bancshares would become the 24th largest insured depository organization in Oklahoma, controlling deposits of approximately $542.2 million, which represent approximately 0.6 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

The Bank Merger Act generally provides that the Board may not approve an application to engage in a transaction under the Bank Merger Act if the transaction involves insured depository institutions with different home states 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.[8] For purposes of the Bank Merger Act, the home state of Equity Bank is Kansas and the home state of MidFirst Bank is Oklahoma.[9] Upon consummation of the proposal, Equity Bank would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. 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 an attempt to monopolize the business of banking in any relevant market.[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 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.[11]

Equity Bank and MidFirst Bank compete directly in the Guymon, Oklahoma, banking market ("Guymon market"), and two of the branches that Equity Bank proposes to acquire are located in that market.[12] 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 share of total deposits of insured depository institutions in the market ("market deposits") that Equity Bank would

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8 12 U.S.C. § 1828(c)(13).

9 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. 12 U.S.C. § 1828(c)(13)(C)(ii)(III).

10 12 U.S.C. § 1828(c)(5)(A).

11 12 U.S.C. § 1828(c)(5)(B).

12 The Guymon market is defined as Cimarron and Texas counties (less the city of Texhoma), Oklahoma, and Morton County, Kansas. The North Highway Branch and the North Academy Branch are located in this market.

control;[13] 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");[14] and other characteristics of the Guymon market.

The competitive effects of the proposal in the Guymon 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. Equity Bank is the largest competitor in the Guymon market, controlling approximately $133.3 million in deposits, which represent approximately 22.3 percent of market deposits. MidFirst Bank is the seventh largest depository institution in the Guymon market, controlling approximately $32.5 million in weighted deposits, which represent approximately 5.4 percent of market deposits. On consummation of the proposal, Equity Bank would remain the largest depository institution in the Guymon market, controlling approximately $198.2 million in market deposits, which would represent approximately 31.5 percent of market deposits. The HHI in the market would increase by 369 points, from 1467 to 1836.

The Board has considered whether 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 Guymon market.[15] Factors indicate that the increase in concentration in the Guymon market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, after consummation of the proposal, seven depository institutions would compete with Equity Bank in the Guymon market. These include one depository institution with a more than 19 percent market share and four depository institutions each with an approximately 10 percent share of market deposits. The presence of these market competitors suggests that Equity Bank would have limited ability unilaterally to offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on Equity Bank in the Guymon market. Further, MidFirst Bank engages in low levels of small business lending in the Guymon market, and analysis of available data suggests the transaction is unlikely to have an adverse competitive impact on small business lending in the market.

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

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[13] Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (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 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.

[15] 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).

Based on the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Guymon 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.[16] 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.

Equity Bank is well capitalized and would remain so on consummation of the proposal. Equity Bank appears to have adequate financial resources to effect the proposal.[17] The asset quality, earnings, and liquidity of Equity Bank are consistent with approval, and Equity 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 purchased. In addition, the future prospects of Equity Bank are considered consistent with approval.

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

Equity Bank is considered to be well managed. The directors and senior executive officers of Equity Bank 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. Equity Bank has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. Equity Bank would apply its risk-management policies, procedures, and controls at the acquired branches, and these policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, Equity 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.

[16] 12 U.S.C. § 1828(c)(5).

[17] Equity Bank would fund the transaction with available cash on hand.

Based on all of the facts of record, including Equity 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 Equity Bank and MidFirst Bank 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.[18] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the 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 the institutions' 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, including with respect to fair lending. 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, 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 Equity Bank and MidFirst Bank; the consumer compliance, including fair lending, records of Equity Bank and MidFirst Bank; confidential supervisory information; and information provided by Equity Bank.

Records of Performance under the CRA

In evaluating the CRA performance of the institutions involved, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views, from the relevant federal financial supervisor or supervisors, which in this case are the Federal Reserve Bank of Kansas City ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC").[22]

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

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

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 financial 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 large insured depository institutions, such as MidFirst Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates an 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 Act ("HMDA"),[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 also are 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, such as Equity Bank, 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 Equity Bank

Equity Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of November 28, 2016 ("Equity Bank

[23] 12 U.S.C. § 2906.

[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).

Evaluation").[29] Equity Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[30]

Examiners found that Equity Bank's average net loan-to-deposit ratio reflected a reasonable effort to extend credit given the bank's size, business activities, and financial condition and the credit needs of the bank's AAs. Examiners noted that a majority of the bank's loans were originated within the bank's AAs. Examiners found that Equity Bank's geographic distribution of HMDA and small business loans reflected reasonable dispersion throughout the bank's AAs. Examiners noted that the distribution of the bank's lending reflected reasonable penetration among borrowers of different income levels and businesses of different revenue sizes within the bank's AAs.

Examiners found that Equity Bank's level of qualified community development loans, investments, donations, and services demonstrated an excellent responsiveness to the needs of the AAs considering the bank's capacity and the availability of community development opportunities in the AAs. Examiners noted that Equity Bank's community development activities were excellent in the Kansas City Missouri-Kansas Multistate MSA AA and the Wichita, Kansas MSA AA and adequate in the State of Missouri/Western Missouri AA and the Western Kansas MSA AA.

CRA Performance of MidFirst Bank

MidFirst Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of October 30, 2017 ("MidFirst Bank Evaluation").[31] The bank received an "Outstanding" rating for the Lending Test, a "Low Satisfactory" rating for the Investment Test, and a "High Satisfactory" rating for the Service Test.[32]

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

Examiners noted that the bank's community development lending was excellent and helped to support revitalization and stabilization efforts, affordable housing, and community services to LMI individuals. Examiners determined that MidFirst Bank's overall investment performance was adequate.

Examiners noted that MidFirst Bank's service delivery systems were accessible to essentially all portions of the bank's AAs, commensurate with the size and scope of the institu-

[29] The Equity Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed residential mortgage loans from January 1, 2014, through December 31, 2015, and small business loans from January 1, 2015, through December 31, 2015. Examiners reviewed community development activities from September 9, 2013, through November 28, 2016.

[30] The Equity Bank Evaluation included full-scope evaluations of the Wichita, Kansas Metropolitan Statistical Area ("MSA") AA; the Kansas City Missouri-Kansas Multistate MSA AA; the Western Kansas MSA AA; and the State of Missouri/Western Missouri AA. Limited-scope evaluations were performed in the Topeka, Kansas MSA AA; the Southeast Kansas MSA AA; and the Crawford County, Kansas MSA AA.

[31] The MidFirst Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage and small business loans from January 1, 2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from January 1, 2014, through October 30, 2016.

[32] The MidFirst Bank Evaluation included full-scope evaluations of the Oklahoma City, Oklahoma MSA AA; Oklahoma non-MSA AA; Phoenix-Mesa-Scottsdale, Arizona MSA AA; and Denver-Aurora-Lakewood, Colorado MSA AA. A limited-scope evaluation was performed in the Tulsa, Oklahoma MSA AA.

tion's operations. Examiners also noted that MidFirst Bank provided an excellent level of community development services, including loan modifications for LMI borrowers.

Additional Supervisory Views

In its review of the proposal, the Board has considered the results of the most recent consumer compliance examination of Equity 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 also has considered the supervisory record of MidFirst Bank, including with respect to consumer compliance.

The Board has taken the information discussed above into account in evaluating the proposal, including in considering whether Equity Bank has the experience and resources to help 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. Equity Bank states that it is committed to providing products and services that benefit the customers of the branches to be acquired. Equity Bank represents that it would offer a wide range of products and services to the customers of the branches, including consumer and commercial deposit and loan products, free nationwide ATM services, online banking, remote deposit capabilities, and investment services. Equity Bank further represents that it would not discontinue any products or services currently offered by MidFirst Bank at the branches.

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 consumer protection laws, confidential supervisory information, information provided by Equity Bank, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on its review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Bank Merger Act requires the Board to consider the risk of the proposal "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

[33] 12 U.S.C. § 1828(c)(5).

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

inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[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 an acquisition of 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 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.[37]

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

Equity Bank has applied under section 9 of the FRA to establish and operate branches at the locations of the acquired branches of MidFirst Bank.[38] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered Equity 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.[39] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

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[35] For further discussion of the financial stability standard, *see Capital One Financial Corporation*, FRB Order No. 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] Equity Bank and MidFirst Bank are predominately engaged in retail and commercial banking activities. Equity Bank 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.

[38] *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). Upon consummation, Equity Bank's branches would be permissible under applicable state law. *See* 6 Okl. St. Ann. § 501.1.

[39] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Equity Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Equity 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective January 23, 2019.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

First Interstate Bank
Billings, Montana

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2019-07 (March 22, 2019)

First Interstate Bank, the state member bank subsidiary of First Interstate BancSystem, Inc. ("First Interstate"), both of Billings, Montana, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[1] to merge with Idaho Independent Bank, Coeur d'Alene, Idaho, a state non-member bank, with First Interstate Bank as the surviving entity. In addition, First Interstate Bank has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of Idaho Independent 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 and the FRA. 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 ("FDIC").

First Interstate, with consolidated assets of approximately $13.3 billion, is the 117th largest insured depository organization in the United States, controlling deposits of approximately $10.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions[4] in the United States.[5] First Interstate controls First Interstate Bank, which has offices in Montana, Wyoming, South Dakota, Oregon, Washington, and Idaho. First Interstate Bank is the 13th largest insured depository institution in Idaho, with approximately $575.1 million in deposits, which represent 2.2 percent of the total amount of deposits of insured depository institutions in that state.[6]

Idaho Independent Bank, with total assets of approximately $747.2 million, is the 1,002nd largest insured depository institution in the United States, controlling deposits of approximately $626.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Idaho Independent Bank has offices only in Idaho. Idaho Independent Bank is the 12th largest insured depository institution in Idaho, with approximately $609.9 million in deposits, which represent 2.4 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, First Interstate would become the 110th largest insured depository organization in the United States, with consolidated assets of approximately $14.1 billion. First Interstate would control approximately $11.5 billion in deposits, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Interstate Bank would become the 7th largest insured depository institution in Idaho, controlling deposits of approximately $1.2 billion, which

1 12 U.S.C. § 1828(c).

2 12 U.S.C. § 321. These locations are listed in Appendix A.

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 asset data are as of December 31, 2018. National deposit, ranking, and market-share data are as of September 30, 2018, unless otherwise noted.

6 State deposit data are as of June 30, 2018, unless otherwise noted.

represent approximately 4.6 percent of the total deposits of insured depository institutions in that state.

Interstate Analysis

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 under state law and provided the resulting bank would be well capitalized and well managed.[7] Under section 44, the Board (1) may not approve an application that would permit an out-of-state bank or out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[8] and (2) in general, may not approve an interstate application if the resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[9] or, in certain circumstances, if the resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[10]

For purposes of section 44 of the FDI Act and the Bank Merger Act, the home state of First Interstate Bank is Montana and the home state of Idaho Independent Bank is Idaho.[11] First Interstate Bank is well capitalized and, upon consummation of the transaction, would be well capitalized and well managed under applicable law. There are no statutory minimum age requirements under the laws of Idaho,[12] and Idaho Independent Bank has been in existence for more than five years.

Upon consummation of the proposal, First Interstate Bank would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Idaho, the only state in which First Interstate Bank and Idaho Independent Bank have overlapping operations, does not impose a limit on the total amount of in-state deposits that a single banking organization may control,[13] and First Interstate Bank would control less than 30 percent of the total deposits of banking organizations in Idaho as a result of the transaction. The Board has considered all other requirements of section 44 of the FDI Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 44 of the FDI Act or the Bank Merger Act from approving the proposal.

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7 12 U.S.C. §1831u(a)(1). Under section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered. *See* 12 U.S.C. §1831u(g)(4).

8 12 U.S.C. §1831u(a)(5).

9 12 U.S.C. § 1831u(b)(2)(A). The Bank Merger Act also includes a prohibition on approval of interstate merger transactions where the resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13).

10 12 U.S.C. § 1831u(b)(2)(B). The state deposit restrictions of section 44 of the FDI Act apply to any state in which both the applicant and target banks have branches. *See* 12 U.S.C. § 1831u(b)(2)(B)(i).

Under certain circumstances not present here, the Board also must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 ("CRA"), 12 U.S.C. § 2901 *et seq*., and the applicant's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831 u(b)(3).

11 For purposes of section 44 of the FDI Act and the Bank Merger Act, a state bank's home state is the state in which the bank is chartered. 12 U.S.C. §§ 1831u(g)(4) and 1828(c)(13)(C)(ii).

12 *See* Idaho Code Ann. § 26-101 *et seq.*

13 *See* Idaho Code Ann. § 26-1606(1).

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.[14] 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.[15]

First Interstate Bank and Idaho Independent Bank compete directly in the Boise, Idaho, banking market ("Boise market"); the Spokane, Washington-Idaho, banking market ("Spokane market"); and the Mountain Home, Idaho, banking market ("Mountain Home market").[16] The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record.[17] In particular, the Board has considered the relative share of total deposits of insured depository institutions in each market ("market deposits") that First Interstate Bank would control;[18] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[19] and other characteristics of each 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 the Boise and Spokane markets. On consummation of the proposal, the Boise and Spokane markets would remain moderately concentrated, and numerous competitors would remain in each market.[20]

Banking Market Warranting Special Scrutiny

The competitive effects of the proposal in the Mountain Home market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in

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[14] 12 U.S.C. § 1828(c)(5)(A).

[15] 12 U.S.C. § 1828(c)(5)(B).

[16] The Boise and Spokane markets are defined in Appendix B. The Mountain Home market is defined as Elmore County and the Grand View county subdivision of Owyhee County, both of Idaho.

[17] On January 10, 2019, the Federal Reserve Bank of Minneapolis ("Reserve Bank"), acting under authority delegated by the Board, approved an application by First Interstate Bank to merge with Community 1st Bank, Post Falls, Idaho, with First Interstate Bank as the surviving entity. The Board has considered the potential competitive effects of that transaction as part of its review of the proposal by First Interstate Bank to merge with Idaho Independent Bank.

[18] Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

[20] The competitive effects of the proposal in the Boise and Spokane markets are discussed in Appendix B.

the DOJ Bank Merger Guidelines when using initial competitive screening data. First Interstate Bank is the fourth largest competitor in the Mountain Home market, controlling approximately $26.6 million in weighted deposits, which represent approximately 13.7 percent of market deposits. Idaho Independent Bank is the fifth largest depository institution in the Mountain Home market, controlling approximately $15.3 million in weighted deposits, which represent approximately 7.9 percent of market deposits. On consummation of the proposal, First Interstate Bank would become the third largest depository institution in the Mountain Home market, controlling approximately $41.9 million in weighted deposits, which would represent approximately 21.6 percent of market deposits. The HHI in the market would increase by 217 points, from 2501 to 2718.

The Board has considered whether 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 Mountain Home market.[21] Factors indicate that the increase in concentration in the Mountain Home market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, one credit union exerts a competitive influence in the Mountain Home market. The institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market.[22] The Board finds that these circumstances warrant including the deposits of the credit union at a 50 percent weight in estimating 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 reweighting the deposits of the credit union at 50 percent, First Interstate Bank, upon consummation, would control approximately 16 percent of market deposits, and the market concentration level in the Mountain Home market measured by the HHI would increase by 119 points to 2163. Although consummation of this proposal would eliminate one existing competitor, the Mountain Home market would continue to be served by five depository institutions, including the credit union noted above. Excluding First Interstate Bank, these competitors would include three depository institutions each with a more than 20 percent share of market deposits and one depository institution with a more than 10 percent share of market deposits. The presence of these viable competitors suggests that First Interstate Bank would have limited ability to unilaterally offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on First Interstate Bank in the Mountain Home market.

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

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[21] 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).

[22] 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, 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).

Based on the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Boise, Spokane, or Mountain Home 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.[23] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of the organizations' significant nonbanking operations, if applicable. 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.

First Interstate Bank and Idaho Independent Bank are well capitalized and the resulting bank would remain so on consummation of the proposal. The proposed transaction involves a bank merger, and First Interstate Bank appears to have adequate financial resources to effect the proposal.[24] The asset quality, earnings, and liquidity of both First Interstate Bank and Idaho Independent Bank are consistent with approval, and First Interstate Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of First Interstate Bank are considered consistent with approval.

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

First Interstate Bank and Idaho Independent Bank are considered to be well managed. The directors and senior executive officers of First Interstate Bank have knowledge of and experience in the banking sector, and the bank's risk-management program appears consistent with approval of this expansionary proposal. First Interstate has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. First Interstate Bank would apply its risk-management policies, procedures, and controls at the combined bank, and these policies, procedures, and controls are considered acceptable from a supervisory perspective. In addi-

[23] 12 U.S.C. § 1828(c)(5).

[24] As consideration for the bank merger, shareholders of Idaho Independent Bank would receive newly issued shares of First Interstate. Neither First Interstate nor First Interstate Bank plans to incur debt to consummate the merger.

tion, First Interstate Bank's management has the experience and resources to operate the combined bank in a safe and sound manner.

Based on all of the facts of record, including First Interstate Bank's supervisory record, managerial and operational resources, and plans for operating the bank after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of First Interstate Bank and Idaho Independent Bank 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.[25] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[26] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[27]

In addition, the Board considers the banks' overall compliance records, including with respect to fair lending. 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, and information provided by the applicant. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of First Interstate Bank and Idaho Independent Bank; the consumer compliance, including fair lending, records of First Interstate Bank and Idaho Independent Bank; confidential supervisory information; and information provided by First Interstate Bank.

Records of Performance under the CRA

In evaluating the CRA performance of the institutions involved, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views, from the relevant federal financial supervisor or supervisors, which in this case are the Reserve Bank and the FDIC.[28]

[25] 12 U.S.C. § 1828(c)(5).

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

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

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[29] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as First Interstate Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an 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 Act,[30] 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;[31] (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.[32] The Investment Test applicable to large institutions evaluates the number and amounts of qualified investments that benefit their AAs, and the Service Test evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[33] Intermediate small banks, such as Idaho Independent Bank, are subject to the Lending Test, as well as a community development test ("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.[34]

CRA Performance of First Interstate Bank

First Interstate Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of June 6, 2016 ("First Interstate

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[29] 12 U.S.C. § 2906.

[30] 12 U.S.C. § 2801 *et seq*.

[31] 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).

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

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

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

Evaluation").[35] First Interstate Bank received an "Outstanding" rating for each of the Lending Test, Investment Test, and Service Test.[36]

Examiners found that First Interstate Bank's lending activity demonstrated excellent responsiveness to credit needs throughout the bank's AAs. Examiners noted that the bank extended a substantial majority of its loans within its AAs. Examiners found that the distribution of the bank's lending to LMI borrowers and businesses and farms of different sizes was excellent. In addition, examiners found that, overall, the bank's distribution of loans was excellent throughout the bank's AAs, including LMI census tracts and nonmetropolitan middle-income census tracts that were classified as distressed and/or underserved.

Examiners found that First Interstate Bank was a leader in making community development loans and had an overall excellent level of qualified investments in the form of securities and donations. Examiners also found that First Interstate Bank made significant use of innovative and complex investments when opportunities existed. Examiners noted that the bank's delivery systems were readily accessible throughout the bank's AAs, including to LMI individuals and geographies. Examiners also found that First Interstate Bank was a leader in providing community development services throughout its AAs. Examiners noted, for example, that the bank's officers and employees assisted nonprofit organizations that supported LMI individuals, job creation, and small businesses.

CRA Performance of Idaho Independent Bank

Idaho Independent Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of March 28, 2016 ("Idaho Bank Evaluation").[37] The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.[38]

Examiners found that Idaho Independent Bank's loan-to-deposit ratio was reasonable, given the bank's size, financial condition, and AA credit needs. Examiners found that the bank made a substantial majority of home mortgage and small business loans, by number and dollar volume, within its combined AAs. Examiners noted that the bank's overall geographic distribution of loans reflected reasonable dispersion throughout the bank's combined AAs. Examiners also noted that the bank's overall distribution of borrowers reflected reasonable penetration among businesses of different revenue sizes and individuals of different income levels within the bank's combined AAs.

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[35] The First Interstate Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed residential mortgage loans, consumer loans, small business loans, and small farm loans from January 1, 2013, through December 31, 2015. Examiners reviewed community development activities from January 1, 2013, through December 31, 2015.

[36] The First Interstate Evaluation included full-scope evaluations of the Billings, Montana Metropolitan Statistical Area ("MSA") AA; the Bozeman, Montana AA; the Casper, Wyoming MSA AA; the Sheridan, Wyoming AA; and the Rapid City, South Dakota MSA AA. Limited-scope evaluations were performed in the Great Falls, Montana MSA AA; the Missoula, Montana MSA AA; the Hamilton, Montana AA; the Hardin/Miles City, Montana AA; the Helena, Montana AA; the Kalispell, Montana AA; the Absarokee/Columbus, Montana AA; the Cheyenne, Wyoming MSA AA; the Jackson, Wyoming AA; the Laramie, Wyoming AA; the Riverton, Wyoming AA; the Belle Fourche, South Dakota AA; the Edgemont, South Dakota AA; and the Sioux Falls, South Dakota MSA AA.

[37] The Idaho Bank Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners reviewed home mortgage loans and small business loans from January 1, 2014, through December 31, 2015. Examiners reviewed community development loans, qualified investments, and community development services from January 22, 2013, through March 28, 2016.

[38] The Idaho Bank Evaluation included a full-scope evaluation of the Boise-Nampa, Idaho MSA AA. Limited-scope evaluations were performed in the Coeur d'Alene MSA AA and Elmore and Blaine counties, all of Idaho.

Examiners noted that Idaho Independent Bank was an active community development lender and made community development investments and donations to nonprofit organizations across its AAs, including organizations that provided affordable housing, trade-based career training, and youth services for children of LMI families. In addition, examiners noted that Idaho Independent Bank employees provided financial services to various community development organizations that benefited the bank's combined AAs.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding the CRA and consumer compliance, including fair lending, records of First Interstate Bank and considered the FDIC's most recent CRA and consumer compliance evaluations of Idaho Independent Bank. The Board has taken the consultations with the Reserve Bank and the information discussed above into account in evaluating the proposal, including in considering whether First Interstate Bank has the experience and resources to help 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. First Interstate Bank represents that it does not anticipate making significant changes in or discontinuing any existing products or services of either First Interstate Bank or Idaho Independent Bank following consummation of the bank merger. First Interstate Bank also represents that customers of Idaho Independent Bank would gain access to, among other benefits, higher lending limits, wealth management services, a more robust credit card program, and a more robust digital banking platform. First Interstate Bank notes that customers of both banks 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 consumer protection laws, confidential supervisory information, information provided by First Interstate Bank, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on its review, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability

The Bank Merger Act requires the Board to consider the risk of the proposal "to the stability of the United States banking or financial system."[39]

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

[39] 12 U.S.C. § 1828(c)(5).

resulting firm.[40] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.[41]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in total assets, or that result in a firm with less than $100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[42]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in total assets and a pro forma organization of less than $100 billion in total assets. 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.[43] 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

First Interstate Bank has applied under section 9 of the FRA to establish and operate branches at the locations of the current main office and branches of Idaho Independent Bank.[44] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered First Interstate 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 prem-

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

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

[42] *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.

[43] First Interstate Bank and Idaho Independent Bank are predominately engaged in retail and commercial banking activities. First Interstate Bank 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.

[44] *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. Under section 44 of the FDI Act, both national banks and state member banks resulting from an interstate merger 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. *See* 12 U.S.C. §§ 36(d) and 1831u(d)(1).

ises.[45] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by First Interstate 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 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective March 22, 2019.

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

Ann E. Misback
Secretary of the Board

Appendix A

Branches to Be Established by First Interstate Bank

1. 401 West Front Street, Boise, Idaho 83702
2. 317 North 9th Street, Boise, Idaho 83702
3. 8351 West Overland Road, Boise, Idaho 83709
4. 113 East Idaho Avenue, Meridian, Idaho 83642
5. 90 South Star Road, Star, Idaho 83669
6. 491 North Main Street, Suite 101, Ketchum, Idaho 83340
7. 620 South Kimball Avenue, Caldwell, Idaho 83605
8. 804 12th Avenue South, Nampa, Idaho 83651
9. 310 American Legion Boulevard, Mountain Home, Idaho 83647
10. 1260 West Riverstone Drive, Coeur d'Alene, Idaho 83814
11. 8882 North Government Way, Hayden Lake, Idaho 83835

[45] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, First Interstate Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

Appendix B

First Interstate Bank/Idaho Independent Bank banking markets consistent with Board precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of deposits	Market deposit shares (%)	Resulting HHI	Change in HHI	Remaining number
Boise, Idaho ("Boise market") – Defined as the Boise metropolitan area in Canyon and Ada counties, southern Gem County, and the cities of Marsing and Homedale in Owyhee County, all of Idaho.						
First Interstate Bank Pre-Consummation	5	$522.5M	4.7			
Idaho Independent Bank	8	$390.8M	3.5			
First Interstate Bank Post-Consummation	4	$913.2M	8.1	1452	32	21
Spokane, Washington-Idaho ("Spokane market") – Defined as the Spokane metropolitan area in Spokane County, Washington, and the central western portion of Kootenai County, Idaho.						
First Interstate Bank Pre-Consummation	9	$460.2M	4			
Idaho Independent Bank	10	$185.3M	1.6			
First Interstate Bank Post-Consummation	7	$645.5M	5.6	1257	13	22

Data and rankings are as of June 30, 2018. 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 3 of the Bank Holding Company Act, Bank Merger Act, and Federal Reserve Act

Fifth Third Bancorp
Cincinnati, Ohio

Fifth Third Bank
Cincinnati, Ohio

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2019-05 (March 6, 2019)

Fifth Third Bancorp ("Fifth Third"), Cincinnati, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire MB Financial, Inc. ("MB Financial"), and thereby indirectly acquire MB Financial Bank, N.A. ("MB Bank"), both of Chicago, Illinois.

In addition, Fifth Third's subsidiary state member bank, Fifth Third 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 MB Bank, with Fifth Third Bank as the surviving entity.[3] Fifth Third 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 MB Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 28642 (June 20, 2018)).[5] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

Fifth Third, with consolidated assets of approximately \$141.7 billion, is the 26th largest depository organization in the United States. Fifth Third controls approximately \$104.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] Fifth Third controls Fifth Third Bank, which operates in Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, and West Virginia. Fifth Third Bank is the 12th largest depository institution in Illinois, controlling deposits of approximately \$10.7 billion, which represent 2.2 percent of the total deposits of insured depository institutions in that state.[7] Fifth Third Bank is the third largest depository institution in Indiana,

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 U.S.C. § 1828(c).

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

5 12 CFR 262.3(b).

6 National asset data and national deposit, ranking, and market-share data are as of September 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

7 State deposit data are as of June 30, 2018, unless otherwise noted.

controlling deposits of approximately $8.8 billion, which represent 6.7 percent of the total deposits of insured depository institutions in that state.

MB Financial, with consolidated assets of approximately $19.7 billion, is the 90th largest depository organization in the United States. MB Financial controls approximately $14.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MB Financial controls MB Bank, which operates in Illinois and Indiana. MB Bank is the ninth largest depository institution in Illinois, controlling deposits of approximately $15.1 billion, which represent 3.1 percent of the total deposits of insured depository institutions in that state. MB Bank is the 140th largest depository institution in Indiana, controlling deposits of approximately $8.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Fifth Third would become the 21st largest insured depository organization in the United States, with consolidated assets of approximately $161.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Fifth Third would control approximately $119.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, Fifth Third would become the fourth largest insured depository organization, controlling deposits of approximately $25.8 billion, which represent 5.4 percent of the total deposits of insured depository institutions in that state. In Indiana, Fifth Third would remain the third largest insured depository institution, controlling deposits of approximately $8.8 billion, which represent 6.7 percent of the total deposits of insured depository institutions in that state.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.[8] Similarly, 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 under state law and provided the resulting bank would be well capitalized and well managed.[9] The Board (1) 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 target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[10] (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 ("CRA")[11] and the applicant's record of compliance with applicable state community reinvestment laws;[12] and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than

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8 12 U.S.C. § 1842(d)(1)(A). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the bank's main office is located. *See* 12 U.S.C. § 1841(o)(4).

9 12 U.S.C. §1831u(a)(1). Under section 44 of the FDI Act, a state bank's home state is the state in which the bank is chartered, and a national bank's home state is the state in which its main office is located. *See* 12 U.S.C. §1831u(g)(4).

10 12 U.S.C. §§1831u(a)(5) and 1842(d)(1)(B).

11 12 U.S.C. § 2901 *et seq.*

12 12 U.S.C. §§ 1831u(b)(3) and 1842(d)(3).

10 percent of the total deposits of insured depository institutions in the United States,[13] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[14]

For purposes of the BHC Act, the home state of Fifth Third is Ohio, and MB Bank is located in Illinois and Indiana. For purposes of section 44 of the FDI Act, the home state of Fifth Third Bank is Ohio, and the home state of MB Bank is Illinois. Fifth Third is well capitalized and well managed, and, upon consummation of the bank merger, Fifth Third Bank would continue to be well capitalized and well managed under applicable law. Fifth Third Bank has an overall "Outstanding" rating under the CRA and is in compliance with applicable state community reinvestment laws. MB Bank has been in existence for more than five years in Illinois and Indiana.[15]

On consummation of the proposal, Fifth Third would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Illinois and Indiana, the only states in which Fifth Third and MB Bank have overlapping banking operations, each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[16] In each state, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act and section 44 of the FDI Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by either statute from approving the proposal.

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.[17] 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 community to be served.[18]

Fifth Third Bank and MB Bank compete directly in the Chicago, Illinois, banking market ("Chicago market") and the Gary/Hammond, Indiana, banking market ("Gary/Hammond market").[19] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits

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[13] 12 U.S.C. §§ 1831u(b)(2)(A) and 1842(d)(2)(A).

[14] 12 U.S.C. §§ 1831u(b)(2)(B) and 1842(d)(2)(B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)-(7). The state deposit restrictions of section 44 of the FDI Act apply to any state in which both the applicant and target banks have branches. *See* 12 U.S.C. § 1831u(b)(2)(B)(i).

[15] 12 U.S.C. § 1842(d)(1)(B)(ii).

[16] 205 Ill. Comp. Stat. 10/3.09 (2018); Ind. Code Ann. § 28-2-17-29 (2018).

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

[18] 12 U.S.C. §§ 1842(c)(1)(B) and 1828(c)(5)(B).

[19] The Chicago market is defined as Cook, DuPage, Lake, Will, Kane, McHenry, Kendall, DeKalb, Grundy, and Kankakee counties, all in Illinois; Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships in Iroquois County, Illinois; Roger, Mona, Pella, and Brenton townships in Ford County, Illinois; and Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, Wisconsin. The Gary/Hammond market is defined as Lake, Porter, La Porte, and Jasper counties, all in Indiana; and Center, Jackson, California (minus the city of Bass Lake), Wayne, and Railroad townships in Starke County, Indiana.

in insured depository institutions in the market ("market deposits") that Fifth Third would control;[20] the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[21] the number of competitors that would remain in the market; 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 in the Chicago and Gary/Hammond markets. On consummation of the proposal, the Chicago market would remain unconcentrated and the Gary/Hammond market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in these markets would be small, and numerous competitors would remain in both markets.[22]

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 Chicago and Gary/Hammond 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 Chicago or Gary/Hammond markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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[20] Deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743(1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

[21] 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.

[22] Fifth Third operates the 11th largest depository institution in the Chicago market, controlling deposits of approximately $10.4 billion, which represent approximately 2.7 percent of market deposits. MB Financial operates the eighth largest depository institution in that market, controlling deposits of approximately $15.1 billion, which represent approximately 3.9 percent of market deposits. On consummation of the proposal, Fifth Third would become the fourth largest depository organization in the market, controlling deposits of approximately $25.4 billion, which represent approximately 6.6 percent of market deposits. The HHI for the Chicago market would increase by 21 points to 943, and 168 competitors would remain in the market.

Fifth Third operates the fifth largest depository institution in the Gary/Hammond market, controlling deposits of approximately $1.0 billion, which represent approximately 6.7 percent of market deposits. MB Financial operates the 27th largest depository institution in that market, controlling deposits of approximately $8.3 million, which represent approximately 0.1 percent of market deposits. On consummation of the proposal, Fifth Third would remain the fifth largest depository organization in the market, controlling deposits of approximately $1.0 billion, which represent approximately 6.7 percent of market deposits. The HHI for the Gary/Hammond market would increase by 1 point to 1043, and 29 competitors would remain in the market.

Financial, Managerial, and Other Supervisory Considerations

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 future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.[23] In its evaluation of the financial factor, 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.

Fifth Third, MB Financial, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.[24] The asset quality, earnings, and liquidity of Fifth Third Bank and MB Bank are consistent with approval, and Fifth Third appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

Fifth Third, MB Financial, and their subsidiary depository institutions are each considered to be well managed. Fifth Third's directors and senior executive officers have knowledge of

[23] 12 U.S.C. §§1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

[24] Fifth Third would effect the holding company transaction by merging a newly formed subsidiary of Fifth Third ("Merger Subsidiary") with and into MB Financial, with MB Financial surviving the merger as a subsidiary of Fifth Third. At the time of the merger, each share of MB Financial common stock would be converted into a right to receive (i)1.45shares of Fifth Third common stock together with cash in lieu of any fractional shares and (ii) $5.54 in cash. Fifth Third has the financial resources to fund the cash portion of the obligation. At the time of the merger, each share of common stock of the Merger Subsidiary would be converted into one share of MB Financial common stock; these shares, which would be owned by Fifth Third, would constitute the only outstanding shares of common stock of MB Financial after the effective time of the merger. Each share of MB Financial preferred stock would remain issued and outstanding, and Fifth Third would not issue any newly created series of preferred stock to holders of MB Financial preferred stock or convert MB Financial preferred stock into any newly created series of Fifth Third preferred stock.

Immediately following the merger of Merger Subsidiary and MB Financial, MB Bank would merge with and into Fifth Third Bank, with Fifth Third Bank as the surviving entity. Each share of MB Bank common stock would be converted into newly issued shares of Fifth Third Financial Corporation, Cincinnati, Ohio, a mid-tier financial holding company of Fifth Third.

and experience in the banking and financial service sectors, and Fifth Third's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered Fifth Third's plans for implementing the proposal. Fifth Third 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. Fifth Third would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Fifth Third's management has the experience and resources to operate the combined organization in a safe and sound manner, and Fifth Third plans to integrate MB Financial's existing management and personnel in a manner that augments Fifth Third's management.[25]

Based on all of the facts of record, including Fifth Third's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Fifth Third and MB Financial 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.[26] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operations,[27] 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.[28]

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Fifth Third Bank and MB Bank; the fair lending and compliance records of both banks; the supervi-

25 On consummation, the number of directors on Fifth Third's board of directors would increase by two, and two individuals currently serving on the board of directors of MB Financial would join the board of Fifth Third. Corresponding changes would be made to the board of directors of Fifth Third Bank.

26 12 U.S.C. §§1842(c)(2) and 1828(c)(5).

27 12 U.S.C. § 2901(b).

28 12 U.S.C. § 2903.

sory views of the Federal Reserve Bank of Cleveland ("Reserve Bank"), the Office of the Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"), and other federal regulatory agencies; confidential supervisory information; information provided by Fifth Third; and the public comments on the proposal.

Public Comments on the Proposal

The Board received three comments on the proposal.[29] Two commenters objected to the proposal, alleging that Fifth Third Bank discriminated against residential mortgage borrowers in majority-minority neighborhoods in the Toledo, Ohio, Metropolitan Statistical Area ("Toledo MSA"), based on disparities in the bank's lending activity between LMI neighborhoods that are majority-minority and those that are predominantly white in the Toledo MSA.

One commenter alleged that Fifth Third Bank has engaged in a pattern of locating branches in the Toledo MSA in a manner that is designed to serve the banking and credit needs of predominantly white neighborhoods, to the detriment of majority-minority neighborhoods. This commenter also alleged that Fifth Third Bank has failed to employ individuals who reside in the communities the bank serves within the Toledo MSA[30] and asserted that Fifth Third Bank has served the credit needs of predominantly white neighborhoods significantly better than those of the majority-minority neighborhoods in the Toledo MSA.[31] In addition, this commenter asserted that Fifth Third Bank failed to adequately market its credit services to residents in majority-minority neighborhoods. In alleging that Fifth Third Bank has failed to meet the credit needs of the Toledo MSA, the commenter cited Fifth Third Bank's 2014 CRA evaluation, in which the bank received a "Needs to Improve" rating for the Lending Test in the Toledo MSA, and cited the bank's 2016 CRA evaluation, in which the bank's performance for the Lending and Investment tests in the Toledo MSA was found to be below the bank's overall performance on those tests in the state of Ohio.

Another commenter asserted that, between 2013-2017, there were wide disparities in Fifth Third Bank's residential real estate loan origination rates in LMI neighborhoods based on the racial composition of the neighborhoods. This commenter also asserted that, since

[29] One commenter requested that approval of the proposal be conditioned on Fifth Third Bank adopting a community benefits plan describing how it plans to meet the convenience and needs of its communities. The Board consistently has 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 private party. *See, e.g., First Busey Corporation*, FRB Order 2019-01 at 11 n.30 (January10, 2019); *HarborOne Mutual Bancshares*, FRB Order No. 2018-18 at 10 n.26 (September 12, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *Howard Bancorp, Inc.*, FRB Order No. 2018-05 at 9 n.21 (February 12, 2018); *Huntington Bancshares Inc* ., FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

[30] The commenter also alleged that Fifth Third Bank's practice of hiring minority loan officers in the Toledo MSA does not adequately reflect the racial composition of the community. A bank holding company or bank's internal employment practices, however, are outside the scope of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act or the Bank Merger Act. *See e.g., IBERIABANK*, FRB Order 2018-06 (February 21, 2018) at 9 n.22 (Bank Merger Act); *SunTrust Bank*, 86 *Fed. Res. Bull*. 65 (1999) at 66 n. 7 (Bank Merger Act); *Banc One Corporation*, 83 *Fed. Res. Bull*. 520 (1997) at 527 n. 34 (section 3 of the BHC Act).

[31] To support this assertion, the commenter provided information intended to show that: (1) loan originations to minority individuals and minority LMI individuals in the Toledo MSA decreased from 2014-2017, and (2) a discrepancy exists in Fifth Third Bank's lending in white LMI neighborhoods compared with majority-minority LMI neighborhoods in the Toledo MSA.

2003, the proportion of Fifth Third Bank's residential mortgage originations in majority-minority and LMI neighborhoods in the Toledo MSA has decreased significantly.

One commenter asserted that MB Bank improperly handled foreclosures on assets that the bank previously had acquired from the FDIC through the failed bank resolution process.[32]

Businesses of the Involved Institutions and Response to the Public Comments

Through its network of branches in ten states, Fifth Third Bank provides commercial, retail, and small business banking, as well as wealth management services to individual, corporate, and municipal customers. These products and services include a wide range of checking, savings, and money market accounts, as well as credit products, such as commercial loans and leases, mortgage loans, installment loans, auto loans, and credit cards.

MB Bank operates primarily in the Chicago metropolitan area and offers a broad range of financial services, primarily to small and middle-market businesses and individuals. MB Bank's primary lines of business include commercial banking, leasing, asset-based lending, retail banking, and wealth management.

In response to the comments, Fifth Third represents that it entered into a community benefits commitment in 2016 with the National Community Reinvestment Coalition ("NCRC") and 145 of the NCRC's member community organizations, including one of the commenters, addressing Fifth Third Bank's lending and investment practices, including in the Toledo MSA and particularly to LMI customers. In addition, Fifth Third represents that it has taken a leadership role in providing financial education and empowerment programs in all of the areas in which Fifth Third Bank operates.

Fifth Third asserts that Fifth Third Bank has sought to increase lending in majority-minority and LMI neighborhoods in the Toledo MSA. Fifth Third acknowledges that, in 2017, the number of the bank's residential mortgage originations in majority-minority neighborhoods in the Toledo MSA decreased slightly, but asserts that the decline was smaller than the overall decline in the bank's mortgage loan originations throughout the Toledo MSA. Fifth Third represents that Fifth Third Bank provides a number of non-lending and non-investment services in the Toledo MSA through employee volunteering.

With respect to Fifth Third Bank's branch locations in the Toledo MSA, Fifth Third represents that the bank routinely evaluates and reviews the location and distribution of its branches and is willing to meet with the commenters to discuss the financial needs of neighborhoods in the Toledo MSA.

In response to a commenter's allegation that Fifth Third Bank's residential mortgage lending in majority-minority and LMI neighborhoods was lower than in predominantly white neighborhoods in the Toledo MSA, Fifth Third asserts that the data cited by the commenter show that Fifth Third Bank has actually increased its residential mortgage originations in LMI and majority-minority neighborhoods as compared to predominantly white neighborhoods. Fifth Third represents that Fifth Third Bank has increased overall access to mortgage credit in majority-minority and LMI neighborhoods in the Toledo MSA. Fifth Third represents that the bank's credit card issuance in majority-minority

[32] The commenter asserts that these foreclosed assets are subject to loss sharing agreements with the FDIC. The Board believes that these allegations are not within the Board's limited jurisdiction to adjudicate and do not relate to factors that the Board may consider when reviewing an application under the BHC Act or the Bank Merger Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

neighborhoods has steadily increased since 2013 as a percentage of the bank's total credit card originations in the Toledo MSA, and the bank has created a new personal line of credit product specifically designed to address the needs of borrowers in areas in which households may be experiencing legacy effects of the financial crisis and are subject to negative equity.

In response to the contention that Fifth Third Bank fails to adequately market its credit services in majority-minority neighborhoods in the Toledo MSA, Fifth Third asserts that the loan application data cited by the commenter do not necessarily support that conclusion. Fifth Third also represents that Fifth Third Bank began an affirmative marketing strategy focusing on residential mortgage lending in majority-minority neighborhoods in 2018.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisors, which in this case are the Reserve Bank for Fifth Third Bank and the OCC for MB Bank.[33] In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[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 a lending test 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"),[35] in addition to small business, small farm, and community development loan data collected and reported under 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

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

[34] 12 U.S.C. § 2906.

[35] 12 U.S.C. § 2801 *et seq*.

individuals;[36] (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. Large institutions also are subject to an investment test that evaluates the number and amounts of qualified investments that benefit their AAs 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.[37]

The Board is concerned when publicly reported 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 the publicly reported data.[38] Consequently, the Board evaluates such data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of Fifth Third Bank

Fifth Third Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the Reserve Bank, as of November 28, 2016 ("Fifth Third Bank Evaluation").[39] The bank received "Outstanding" ratings for the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.[40]

Examiners found that Fifth Third Bank originated a substantial majority of its loans inside its AAs and that the bank's overall lending activity reflected excellent responsiveness to the credit needs of its AAs. Examiners noted that the bank's small loans to businesses reflected excellent geographic penetration through the bank's AAs. In addition, examiners found the bank's distribution of product lines by income level of the borrower to be excellent and the bank's distribution of loans to businesses with different revenue sizes to be good. Examiners noted that the bank had a good record of serving the credit needs of low-income individuals and areas and of very small businesses. Examiners further noted

36 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).

37 12 CFR 228.21 *et seq*.

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

39 The Fifth Third Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2014, through June 30, 2016. The evaluation period for community development loans, investments, and services was January 1, 2014, through June 30, 2016.

40 The Fifth Third Bank Evaluation included full-scope evaluations of the Chicago-Naperville-Elgin, Illinois-Indiana-Wisconsin Combined Statistical Area ("CSA"); Cincinnati, Ohio-Kentucky-Indiana MSA; Evansville, Indiana-Kentucky MSA; Huntington-Ashland, West Virginia-Kentucky-Ohio MSA; Louisville-Jefferson County, Kentucky-Indiana MSA; South Bend-Elkhart-Mishawaka, Indiana, Michigan CSA; Orlando-Deltona-Daytona Beach, Florida CSA; Tampa-St. Petersburg-Clearwater, Florida MSA; Atlanta-Sandy Springs-Roswell, Georgia MSA; Southern Illinois Non-MSA AA; Indianapolis-Carmel-Muncie, Indiana CSA; Southern Indiana Non-MSA AA; Lexington-Fayette, Kentucky MSA; Detroit-Warren-Ann Arbor CSA; Grand Rapids-Wyoming-Muskegon, Michigan CSA; St. Louis, Missouri MSA; Charlotte-Concord-Gastonia, North Carolina MSA; Cleveland-Akron-Canton, Ohio CSA; Columbus, Ohio MSA; Pittsburgh, Pennsylvania, MSA; Nashville-Davidson-Murfreesboro-Franklin, Tennessee, MSA; and Charleston, West Virginia MSA. Limited-scope evaluations were conducted in the bank's remaining AAs, including the Toledo MSA, an area of concern for two commenters.

that the bank was a leader in making community development loans and made extensive use of flexible lending practices in serving credit needs in its AAs.

In Ohio, Fifth Third Bank's performance under the Lending Test was rated "Outstanding." In the Toledo MSA, examiners found that the bank's lending performance was below Fifth Third Bank's performance for the state overall. However, examiners found the level of community development loans in the Toledo MSA to be good and noted a low level of lending gaps (*i.e.*, census tracts in which the bank had provided no loans) in the Toledo MSA.

With respect to the Investment Test, examiners found that Fifth Third Bank's level of qualified community development investments and grants was excellent, and the bank often was in a leadership role in providing community development investments and grants. Examiners found that a majority of Fifth Third Bank's qualified community development investments by amount and number supported affordable housing, and many of Fifth Third Bank's tax credit projects had either sustained or been the catalyst for neighborhood revitalization projects.

In Ohio, Fifth Third Bank's performance under the Investment Test was rated "Outstanding." In the Toledo MSA, examiners found the bank's investment performance to be below the bank's performance for the state overall. However, examiners noted that investment activity in the Toledo MSA was good, and the weaker performance primarily was due to a lower level of qualified investments and contributions relative to Fifth Third Bank's operational presence in the Toledo MSA.

With respect to the Service Test, examiners found that the bank's retail delivery systems were accessible to all geographies and individuals of different income levels and businesses of different revenue sizes within the bank's AAs. Examiners noted that the bank's record of opening and closing banking centers had not adversely affected the accessibility of the bank's delivery systems. Examiners found that the bank's banking services and hours did not vary in a way that inconvenienced any portion of the bank's AAs. Examiners also found that the bank was a leader in providing community development services.

In Ohio, Fifth Third Bank's performance under the Service Test was rated "High Satisfactory." In the Toledo MSA, examiners found that the bank's service performance was consistent with Fifth Third Bank's performance for the state overall. Examiners noted that retail services were good in the Toledo MSA and that the bank's stronger performance in the Toledo MSA relative to two other AAs in Ohio was primarily due to greater accessibility of delivery systems in lower-income geographies. Examiners found that the bank's level of qualified community development services was excellent in the Toledo MSA.

Fifth Third Bank's Efforts since the Fifth Third Bank Evaluation

Fifth Third states that, since the Fifth Third Bank Evaluation, Fifth Third Bank has continued to build upon its successful history of community engagement and lending under the CRA. Fifth Third represents that the bank recently created a position focused on small business lending and has hired bankers to focus on LMI markets. In addition, Fifth Third represents that the bank partnered with the National Development Council to offer a certification to community development housing professionals with the goal of accelerating the capacity and production of affordable housing developers. Fifth Third asserts that the bank has launched or expanded several financial education programs for students and adults. Fifth Third also asserts that the bank has made significant progress under its 2016 community benefits plan, which includes specific goals for mortgage lending, small business lending, and community development lending and investments.

CRA Performance of MB Bank

MB Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of January 17, 2017 ("MB Bank Evaluation").[41] The bank received "Outstanding" ratings for the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.[42]

Examiners found that MB Bank's overall lending activity reflected excellent responsiveness to the credit needs of the bank's AAs. Examiners noted that the bank's community development loans were effective in helping the bank address AA credit needs. In the Chicago MD MMSA, the bank's largest AA, examiners found that the geographic penetration of the bank's loans throughout the AA was excellent.

Examiners found that the bank had an overall excellent level of qualified community development investments that were responsive to AA needs. Examiners found that bank branches were reasonably accessible to people and geographies of different income levels. In the Chicago MD MMSA, examiners found that MB Bank had invested in affordable housing for and provided community services to LMI individuals and invested in stabilization and revitalization efforts for LMI geographies. Examiners also noted that community development services were effective in addressing and responsive to AA needs.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding Fifth Third Bank's CRA and fair lending records and with the Reserve Bank and CFPB regarding the bank's consumer compliance record. The Board also consulted with the OCC regarding MB Bank's CRA and fair lending records and with the OCC and CFPB regarding MB Bank's consumer compliance record. The Board has considered the results of the most recent CRA and consumer compliance examinations of Fifth Third Bank and MB Bank, which included a review of the banks' compliance risk-management programs and compliance with consumer protection laws and regulations.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether Fifth Third has the experience and resources to ensure that Fifth Third Bank helps to meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Fifth Third represents that, as a result of the transaction, MB Bank customers would benefit from Fifth Third Bank's broader payments, wealth and asset management, capital markets, retail and commercial banking services, as well as the bank's technological capabilities and ability to make larger credit commitments. In addition, Fifth Third Bank customers would gain access to certain products and services offered by MB Bank, including small ticket leasing and prepaid card products. Fifth Third

[41] The MB Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated between January 1, 2013, and December 31, 2015. The evaluation period for community development loans, investments, and services was August 13, 2013, through December 31, 2016.

[42] The MB Bank Evaluation included full-scope evaluations of the Chicago-Naperville-Arlington Heights Metropolitan Division Multistate Metropolitan Statistical Area ("Chicago MD MMSA"); the LaSalle County, Illinois, Non-MSA AA; and the Philadelphia, Pennsylvania, MD AA. Limited-scope evaluations were performed in the Lake County, Illinois-Kenosha County, Wisconsin MD AA; the Gary, Indiana MD AA; and the Elgin, Illinois MD AA. MB Bank no longer operates in Pennsylvania.

Bank represents that it does not expect to discontinue any products or services following consummation of the transaction. Further, Fifth Third represents that customers of both banks would have access to an expanded network of branches and ATMs as a result of the transaction.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory views of the Reserve Bank, OCC and CFPB; confidential supervisory information; information provided by Fifth Third: 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 determines that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider a proposal's "risks to the stability of the United States banking or financial system."[43]

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.[44] 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.[45]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. Fifth Third and MB Financial both offer a range of retail, commercial, and wealth management banking products and services. Fifth Third has, and as a result of the proposal would continue to have, small-to-moderate market shares in these products and services on a nationwide basis. Following the transaction, substitute providers would be readily available for the critical financial services provided by the combined organization, and the acquisition would not materially heighten the organization's interconnectedness with other firms or markets within the United States banking or financial system. The acquisition would not have meaningful effects on the cross-border activities of the acquirer or lead to changes in the institution's organizational structure, complexity, or unique characteristics that would complicate its resolution.

[43] 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

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

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

In light of all the facts and circumstances, this transaction would not 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

Fifth Third Bank has applied under section 9 of the FRA to establish branches at the current main office and branches of MB Bank.[46] The Board has assessed the factors it is required to consider when reviewing an application under that section, including Fifth Third Bank's financial condition, management, capital, actions in helping to meet the convenience and needs of the communities to be served, CRA performance, and investment in bank premises.[47] For the reasons discussed in this order, the Board determines that those factors are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Fifth Third with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the 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 March 6, 2019.

Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governor Bowman; Governor Brainard abstained.

Margaret McCloskey Shanks
Deputy Secretary of the Board

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46 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that, under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12U.S.C. §36(b)(2) and (c). In addition, under section44 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. *See* 12 U.S.C. §1831u(d). Upon consummation, all of Fifth Third Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/21.4 (2018); Ind. Code Ann. § 28-2-13-19 (2018).

47 *See* 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposal, Fifth Third Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

Appendix

Branches to Be Established by Fifth Third Bank

Illinois Branches

1. 388 South Main Street, Bartlett, Illinois 60103
2. 1500 Roosevelt Road, Broadview, Illinois 60155
3. 5750 West 87th Street, Burbank, Illinois 60459
4. 925 Burnham Avenue, Calumet City, Illinois 60409
5. One East Wacker Drive, Chicago, Illinois 60601
6. 2 South Lasalle Street, Chicago, Illinois 60603
7. One South Wacker Drive, Chicago, Illinois 60606
8. 932 W. Randolph Street, Chicago, Illinois 60607
9. 800 West Madison Street, Chicago, Illinois 60607
10. 1618 W. 18th Street, Chicago, Illinois 60608
11. 4644 South Bishop Street, Chicago, Illinois 60609
12. 363 West Ontario Street, Chicago, Illinois 60610
13. 33 W Huron, Chicago, Illinois 60610
14. 3604 North Southport Avenue, Chicago, Illinois 60613
15. 3959 North Lincoln Avenue, Chicago, Illinois 60613
16. 2401 North Halsted Street, Chicago, Illinois 60614
17. 3030 East 92nd Street, Chicago, Illinois 60617
18. 3940 North Damen Avenue, Chicago, Illinois 60618
19. 2973 N. Milwaukee Ave, Chicago, Illinois 60618
20. 820 North Western Avenue, Chicago, Illinois 60622
21. 936 North Western Avenue, Chicago, Illinois 60622
22. 1554 West North Avenue, Chicago, Illinois 60622
23. 1624 West Division Street, Chicago, Illinois 60622
24. 2420 West Lawrence Avenue, Chicago, Illinois 60625
25. 4800 North Western Avenue, Chicago, Illinois 60625
26. 8300 West Belmont Avenue, Chicago, Illinois 60634
27. 6422 West Archer Avenue, Chicago, Illinois 60638
28. 5670 North Milwaukee Avenue, Chicago, Illinois 60646
29. 2004 North Western Avenue, Chicago, Illinois 60647
30. 3179 North Clark Street, Chicago, Illinois 60657
31. 5918 N. Broadway, Chicago, Illinois 60660
32. 600 W. Plainfield Road, Countryside, Illinois 60525
33. 550 East Sibley Boulevard, Dolton, Illinois 60419
34. 14121 Chicago Street, Dolton, Illinois 60419
35. 450 East Higgins Road, Elk Grove Village, Illinois 60007
36. 356 Park Avenue, Glencoe, Illinois 60022
37. 2823 B Pfingsten Road, Glenview, Illinois 60026
38. 18301 South Halsted, Glenwood, Illinois 60425
39. 2345 West 183rd Street, Homewood, Illinois 60430
40. 401 North La Grange Road, La Grange Park, Illinois 60526
41. 1151 State Street, Lemont, Illinois 60439
42. 4010 West Touhy Ave, Lincolnwood, Illinois 60712
43. 6401 North Lincoln Avenue, Lincolnwood, Illinois 60712
44. 9147 Waukegan Road, Morton Grove, Illinois 60053
45. 6201 Dempster Street, Morton Grove, Illinois 60053
46. 15 East Prospect Avenue, Mount Prospect, Illinois 60056
47. 7557 Oakton St, Niles, Illinois 60714
48. 7557 West Oakton Street, Niles, Illinois 60714
49. 7222 West Cermak Road, North Riverside, Illinois 60546

50. 1090 Willow Road, Northbrook, Illinois 60062
51. 15533 Cicero Avenue, Oak Forest, Illinois 60452
52. 9701 South Cicero Avenue, Oak Lawn, Illinois 60453
53. 9101 West 159th Street, Orland Hills, Illinois 60477
54. 700 West Euclid Avenue, Palatine, Illinois 60067
55. 7727 Lake Street, River Forest, Illinois 60305
56. 6111 North River Road, Rosemont, Illinois 60018
57. 1199 East Higgins Road, Schaumburg, Illinois 60173
58. 4356 Oakton Street, Skokie, Illinois 60076
59. 4400 Oakton Street, Skokie, Illinois 60076
60. 4801 W Golf Rd, Skokie, Illinois 60077
61. 100 West Higgins Road, South Barrington, Illinois 60010
62. 16145 South State Street, South Holland, Illinois 60473
63. 475 East 162nd Street, South Holland, Illinois 60473
64. 18299 S Harlem Ave, Tinley Park, Illinois 60477
65. 16039 S Harlem Ave, Tinley Park, Illinois 60477
66. 16700 South Harlem Avenue, Tinley Park, Illinois 60477
67. 9561 W. 171st Street, Tinley Park, Illinois 60487
68. 125 McHenry Road, Wheeling, Illinois 60090
69. 777 West Army Trail Road, Addison, Illinois 60101
70. 2992 Indian Trail Road, Aurora, Illinois 60502
71. 1230 Mark Street, Bensenville, Illinois 60106
72. 485 West Army Trail Road, Bloomingdale, Illinois 60108
73. 7000 S County Line Road, Burr Ridge, Illinois 60527
74. 8300 South Madison, Burr Ridge, Illinois 60527
75. 2401 75th Street, Darien, Illinois 60561
76. 990 North York Road, Elmhurst, Illinois 60126
77. One Yorktown, Lombard, Illinois 60148
78. 1145 South Main Street, Lombard, Illinois 60148
79. 1400 16th Street, Oak Brook, Illinois 60523
80. 4685 Winfield, Warrenville, Illinois 60555
81. 212 South West Street, Wheaton, Illinois 60187
82. 700 West Fabyan, Batavia, Illinois 60510
83. 2607 Lincoln Highway, Saint Charles, Illinois 60175
84. 581 Elm Place, Suite 110, Highland Park, Illinois 60035
85. 459 South Rand Road, Lake Zurich, Illinois 60047
86. 3196 West Route 60, Mundelein, Illinois 60060
87. 1620 North Milwaukee Avenue, Vernon Hills, Illinois 60061
88. 455 South Weber Road, Bolingbrook, Illinois 60490
89. 1100 East Exchange Avenue, Crete, Illinois 60417
90. 20825 S. Lagrange Rd., Frankfort, Illinois 60423
91. 13900 South Bell Road, Homer Glen, Illinois 60491

Indiana Branch

92. 1218 Sheffield Avenue, Dyer, Indiana 46311