



Legal Developments: Second Quarter, 2018

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Independent Bank Group, Inc.
McKinney, Texas

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-11 (May 02, 2018)

Independent Bank Group, Inc. (“IBG”), McKinney, Texas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Integrity Bancshares, Inc. (“Integrity”), and thereby indirectly acquire Integrity Bank SSB (“Integrity Bank”), both of Houston, Texas. Following the proposed acquisition, Integrity Bank would be merged into IBG’s subsidiary bank, Independent Bank, McKinney, Texas.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 2988 (January 22, 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.

IBG, with consolidated assets of approximately \$8.7 billion, is the 147th largest insured depository organization in the United States.⁵ IBG controls approximately \$6.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IBG controls Independent Bank, which has operations in Texas and Colorado. IBG is the 17th largest insured depository organization in Texas, controlling deposits of approximately \$6.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

Integrity, with consolidated assets of approximately \$759.3 million, is the 978th largest insured depository organization in the United States. Integrity controls approximately \$639.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Integrity

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Integrity Bank into Independent Bank, which is expected to occur immediately after IBG’s acquisition of Integrity, is subject to approval of the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. *See* 12 U.S.C. § 1828(c).

⁴ 12 CFR 262.3(b).

⁵ National deposit, market share, asset, and ranking data are as of December 31, 2017, unless otherwise noted.

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

controls Integrity Bank, which operates only in Texas. Integrity is the 95th largest insured depository organization in Texas, controlling deposits of approximately \$648.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, IBG would become the 138th largest insured depository organization in the United States, with consolidated assets of approximately \$9.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. IBG would control consolidated deposits of approximately \$7.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IBG would become the 15th largest insured depository organization in Texas, controlling deposits of approximately \$6.9 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁷ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

IBG and Integrity have subsidiary depository institutions that compete directly in the Houston, Texas banking market (“Houston market”).⁹ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that IBG would control;¹⁰ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the U.S. Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹¹ and other characteristics of the market.

⁷ 12 U.S.C. § 1842(c)(1).

⁸ 12 U.S.C. § 1842(c)(1)(B).

⁹ The Houston market is defined as the Houston-Sugarland-Baytown Metropolitan Statistical Area (“MSA”), which includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller Counties, all in Texas.

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

¹¹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that 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.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Houston market. On consummation of the proposal, the Houston market would remain highly concentrated, as measured by the HHI. The change in the HHI in this market would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in the market.¹²

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 Houston 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 Houston 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.¹³ 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.

IBG and Independent Bank are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is funded primarily through an exchange of shares, with a subsequent merger of the subsidiary depository institutions.¹⁴ The asset quality, earnings, and liquidity of both Independent Bank and Integrity Bank are consistent with approval, and IBG appears to have adequate resources to absorb the related costs of the proposal

¹² IBG operates the 24th largest depository institution in the Houston market, controlling approximately \$1.0 billion in deposits, which represent less than 1 percent of market deposits. Integrity operates the 29th largest depository institution in the same market, controlling approximately \$648.4 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, IBG would become the 16th largest depository organization in the market, controlling deposits of approximately \$1.7 billion, which represent less than 1 percent of market deposits. There would be no increase in the HHI, and 94 competitors would remain in the market.

¹³ 12 U.S.C. §§ 1842(c)(2), (5), & (6).

¹⁴ At the time of the merger, each share of Integrity common stock would be converted into a right to receive IBG common stock and cash, based on an exchange ratio. IBG would fund the cash portion of the exchange through available cash. IBG has the financial resources to effect the proposed transaction.

and to complete the integration of the institutions' operations. In addition, 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 IBG, Integrity, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by IBG; 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.

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

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

Based on all of the facts of record, including IBG'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 IBG and Integrity 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.¹⁵ In its evaluation of the effects of the proposal on the convenience and needs of the communities they serve, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").¹⁶ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,¹⁷ 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

¹⁵ 12 U.S.C. § 1842(c)(2).

¹⁶ 12 U.S.C. § 2901 *et seq.*

¹⁷ 12 U.S.C. § 2901(b).

community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹⁸

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 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 of the facts of record, including reports of examination of the CRA performance of Independent Bank and Integrity Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by IBG; and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal, alleging that Independent Bank has engaged in redlining in Dallas and Houston, Texas.¹⁹ Specifically, the commenter alleged that Independent Bank disfavors certain African American neighborhoods in Dallas and Houston and has limited its lending, marketing activities, community development activities, and branching in those areas.

Business of the Involved Institutions and Response to the Public Comment

IBG and Independent Bank offer a range of financial products and services to individual customers and businesses. Through its network of 70 branches, Independent Bank offers various deposit products and lending services to consumers and businesses, including certificates of deposits, money market accounts, commercial checking accounts, commercial and consumer loans, residential mortgages, home equity loans, and commercial real estate lending. Integrity Bank provides a range of banking services through its four branches, with a focus on commercial banking. Integrity Bank offers its customers deposit products and lending services and also conducts residential mortgage operations.

In response to the comment, IBG and Independent Bank deny the commenter’s allegations. They represent that Independent Bank’s branch network was not structured to avoid serving any potential geographic areas, but instead is largely based upon the locations of the banks that IBG has acquired. They note that all of the banks IBG has acquired over the past five years have had a “Satisfactory” CRA rating, indicating that the banks had a proven record of serving the credit needs of their communities. In addition, IBG represents that it is preparing a strategic branching policy to help monitor Independent Bank’s branch network and ensure that Independent Bank has locations that serve all of the communities within its assessment areas (“AAs”). IBG and Independent Bank further represent that they have implemented delivery systems that allow Independent Bank to make its products and services available regardless of the geographic location of its branches. These systems

¹⁸ 12 U.S.C. § 2903.

¹⁹ 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>.

include electronic banking products, such as online banking, telephonic and text messaging, debit cards and automated teller machines (“ATMs”), and mobile banking applications. In addition, Independent Bank represents that it has marketed its banking services through established relationships with community leaders and groups, including participating in a program advanced by a consumer advocacy group to establish a low-cost checking account that would alleviate check cashing and money order fees and be marketed toward LMI individuals.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.²⁰ In this case, the Board considered the supervisory views of the FDIC with respect to both institutions.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²¹ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. This 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”),²² in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution’s AAs; (2) the geographic distribution of the institution’s lending, including the proportion and dispersion of the institution’s lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;²³ (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

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

²¹ 12 U.S.C. § 2906.

²² 12 U.S.C. § 2801 *et seq.*

²³ 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).

availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.²⁴ Intermediate small banks, such as Integrity 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.²⁵

CRA Performance of Independent Bank

Independent Bank was assigned an overall “Satisfactory” rating by the FDIC at its most recent CRA performance evaluation, as of August 21, 2017 (“Independent Bank Evaluation”).²⁶ The bank received a “High Satisfactory” rating for the Investment Test and “Low Satisfactory” ratings for the Lending Test and the Service Test.²⁷ Independent Bank’s performance in the Dallas and Houston AAs was weighted most heavily by examiners due to the bank’s volume of lending and deposit activity in these areas.

Examiners found that Independent Bank demonstrated good performance regarding its lending activities for home mortgage and small business loans, originated a high percentage of its loans inside its AAs, and demonstrated an overall adequate record regarding its distribution of loans based on geography and the borrower’s income level or revenue size. Further, examiners found that Independent Bank was a leader in granting community development loans and demonstrated excellent responsiveness to community needs.

In the Dallas AA, an area of concern to the commenter, examiners found that the bank’s geographic distribution of small business loans in low-income census tracts was adequate. With respect to home purchase and home improvement loans, examiners provided limited weight to lending in low-income census tracts given the limited lending opportunities within LMI geographies in the AA. Examiners found, with respect to loan distribution based on business revenue size, that the bank’s distribution of small business loans in the Dallas AA reflected good performance. Examiners found that the bank’s distribution of loans based on borrower income level was adequate for home purchase mortgages and excellent for home improvement loans. Examiners noted the limited lending opportunities to low-income borrowers relating to the bank’s distribution of home purchase loans in the Dallas AA, but examiners found that the bank’s distribution of home improvement loans to low-income borrowers reflected excellent performance.

In the Houston AA, the other area of concern to the commenter, examiners found that the geographic distribution of the bank’s small business and home mortgage loans reflected adequate performance. Independent Bank’s distribution of small business loans based on business revenue size in the AA reflected good performance. Further, while performance relating to home mortgage lending to LMI borrowers in the Houston AA did not reflect

²⁴ See 12 CFR 228.21 *et seq.*

²⁵ See 12 CFR 228.26(c).

²⁶ The Independent Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and small business loans originated from January 1, 2015, through June 30, 2017. The evaluation period for community development investments was from the date each investment was purchased to August 21, 2017, and the evaluation period for community development loans and services was from September 8, 2014, through August 21, 2017. Independent Bank acquired Carlile Bancshares, Inc., and its subsidiary, Northstar Bank, both of Denton, Texas, on April 1, 2017. Examiners did not consider the newly acquired locations and loans associated with this acquisition as part of their review.

²⁷ The Independent Bank Evaluation included full-scope evaluations of the Dallas-Plano-Irving, Texas Metropolitan Division AA (“Dallas AA”) and the Houston-Baytown-Sugarland, Texas MSA AA (“Houston AA”). Limited-scope evaluations were performed of the Austin-Round Rock-San Marcos, Texas MSA AA, the Sherman-Denison, Texas MSA AA, and the Waco, Texas MSA AA.

adequate performance, examiners noted that the bank did show improvement with respect to its home purchase loans in 2016.

Examiners found that Independent Bank was a leader in granting community development loans and demonstrated excellent responsiveness to community development needs. In particular, examiners noted that bank management made extensive efforts to identify and locate these types of loans. The bank's community loans primarily addressed revitalization and stabilization and benefitted businesses that supported permanent job creation or retention in LMI geographies. Finally, examiners found that the bank made occasional use of innovative or flexible lending practices, such as through Small Business Administration lending as well as Federal Housing Administration and Veterans Affairs residential mortgage lending, to reach LMI borrowers and neighborhoods.

Examiners found that Independent Bank's investments demonstrated a significant level of qualified investment activity, and these investments were responsive to needs of LMI individuals. In addition, examiners found that the bank's delivery systems were reasonably accessible and that the bank maintained some branches in LMI census tracts. Examiners further noted that the bank's delivery systems, such as services through the internet, by phone, via text messaging, through debit cards, and at ATMs, increased the accessibility of banking services.

CRA Performance of Integrity Bank

Integrity Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation, as of September 8, 2015 ("Integrity Bank Evaluation").²⁸ The bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test.²⁹

Examiners concluded that Integrity Bank had a satisfactory record of helping to meet the credit needs of its AA. In particular, examiners found that the bank had a more than reasonable record regarding its loan-to-deposit ratio. In addition, examiners found that the bank originated a majority of its loans, including small business and home mortgage loans, inside its AA. Examiners noted that Integrity Bank had a reasonable record regarding its distribution of loans based on geography and the borrower's income level or revenue size. Finally, examiners noted that the bank had not received any CRA-related complaints since the previous evaluation.

Examiners noted that Integrity Bank's community development performance demonstrated excellent responsiveness to the community development needs of its AA through community development loans, investments, and services.

Additional Supervisory Views

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

²⁸ The Integrity Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and commercial loans originated from January 1, 2013, through June 30, 2015. The evaluation period for community development lending, investments, and services was from December 3, 2012, to September 8, 2015.

²⁹ The Integrity Bank evaluation included a full-scope evaluation of the Houston-The Woodlands-Sugarland, Texas MSA AA.

recent consumer compliance examination of Integrity Bank conducted by the FDIC, which included a review of the bank's consumer compliance function.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. IBG represents that existing customers of Integrity Bank would benefit from access to larger branch and ATM networks. In particular, banking offices in the Houston AA available to Integrity Bank customers would expand from four to 14 locations. Finally, the combined organization would have additional capital to support a larger legal lending limit and, because the transaction should provide opportunities for IBG to achieve cost savings, IBG represents that it would be able to provide its customers with more efficient and cost-effective bank services.

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 IBG, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."³⁰

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.³¹ 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

³⁰ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. § 1842(c)(7).

³¹ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³²

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.³³

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁴ 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 proposal should be, and hereby is, approved.³⁵ 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 IBG with all of the conditions imposed in this order, including receipt of all

³² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³³ 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.

³⁴ As noted, IBG and Integrity offer a range of retail and commercial banking products and services. IBG has and, as a result of the transaction, would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

³⁵ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, 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 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 public hearing on the proposal is denied.

required regulatory approvals, and on the commitments made to the Board in connection with the application. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Dallas, acting under delegated authority.

By order of the Board of Governors, effective May 2, 2018.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Ameris Bancorp Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2018-12 (May 9, 2018)

Ameris Bancorp (“Ameris”), Moultrie, Georgia, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Atlantic Coast Financial Corporation (“Atlantic”), and thereby indirectly acquire Atlantic Coast Bank, both of Jacksonville, Florida. Atlantic Coast Bank would be merged into Ameris’s subsidiary bank, Ameris Bank, Moultrie, Georgia.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 813 (January 8, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Ameris, with consolidated assets of approximately \$7.6 billion, is the 159th largest insured depository organization in the United States. Ameris controls approximately \$5.9 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Ameris controls Ameris Bank, which operates in Georgia, Florida, Alabama, and South Carolina. Ameris is the 14th largest insured depository organization in Georgia, controlling deposits of approximately \$2.8 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state.⁶ Ameris is the 32nd largest insured depository organization in Florida, controlling deposits of approximately \$2.3 billion, which represent 0.4 percent of the total deposits of insured depository institutions in that state.

Atlantic, with consolidated assets of approximately \$913.9 million, is the 800th largest insured depository organization in the United States. Atlantic controls approximately \$678.9 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Atlantic controls Atlantic Coast Bank, which operates in Florida and Georgia. Atlantic is the 77th largest insured depository organization in Florida, controlling deposits of approximately \$453.6 million, which represent 0.1 percent of the total deposits of insured depository institutions in that state. Atlantic is the 72nd largest insured depository organization in Georgia, controlling deposits of approximately \$236.6 million, which represent 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Ameris would become the 152nd largest insured depository organization in the United States, with consolidated assets of approximately \$8.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total deposits of approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Atlantic Coast Bank into Ameris Bank is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on April 24, 2018.

⁴ 12 CFR 262.3(b).

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

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

\$6.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, Ameris would become the 13th largest insured depository organization, controlling deposits of approximately \$3.1 billion, which represent 1.3 percent of the total deposits of insured depository institutions in the state. In Florida, Ameris would become the 29th largest insured depository organization, controlling deposits of approximately \$2.7 billion, which represent 0.5 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.⁷ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁸ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.⁹

For purposes of the BHC Act, the home state of Ameris is Georgia, and Atlantic Coast Bank is located in Florida and Georgia.¹⁰ Ameris and Ameris Bank are well capitalized and well managed under applicable law, and Ameris Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹¹ There are no minimum age requirements under the laws of Florida that would apply to Ameris’s acquisition of Atlantic, and Atlantic Coast Bank has been in existence for more than five years.¹²

On consummation of the proposed transaction, Ameris would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Neither Florida nor Georgia imposes a limit on the total amount of in-state deposits that a single banking organization may control. These are the only states in which Ameris and Atlantic have overlapping operations. The Board has considered all other requirements of section 3(d) of the BHC Act, including Ameris 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.

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

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

¹⁰ See 12 U.S.C. § 1841(o)(4). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² See Fla. Stat. § 658.2953.

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.¹³ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁴

Ameris Bank and Atlantic Coast Bank compete directly in the Jacksonville Area, Florida, banking market (“Jacksonville market”); the Douglas Area, Georgia, banking market (“Douglas market”); and the Waycross Area, Georgia, banking market (“Waycross market”).¹⁵ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market (“market deposits”) that Ameris would control;¹⁶ 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”);¹⁷ 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 Jacksonville, Douglas, and Waycross markets. On consummation of the proposal, the Jacksonville market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines; however, the change in HHI would be small and numerous competitors would remain in the market.¹⁸ The Douglas and Waycross markets would remain moderately concentrated

¹³ 12 U.S.C. § 1842(c)(1).

¹⁴ 12 U.S.C. § 1842(c)(1)(B).

¹⁵ The Jacksonville market is defined as Baker, Clay, Duval, and Nassau Counties, Florida; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, Florida; and the city of Folkston in Charlton County, Georgia. The Douglas market is defined as Atkinson and Coffee Counties, Georgia. The Waycross market is defined as Pierce and Ware Counties, Georgia.

¹⁶ Local deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *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).

¹⁷ 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.

¹⁸ Ameris operates the 7th largest depository institution in the Jacksonville market, controlling approximately \$741.5 million in deposits, which represent 1.5 percent of market deposits. Atlantic operates the 11th largest depository institution in the same market, controlling deposits of approximately \$453.6 million, which represent approximately 0.9 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 6th largest depository organization in the market, controlling deposits of approximately \$1.2 billion, which represent approximately 2.5 percent of market deposits. The HHI for the Jacksonville market would increase by 3 points to 2840, and 32 other banking organizations would remain in the market.

as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Douglas market would be small, and nine competitors would remain in the market.¹⁹ Seven competitors would remain in the Waycross market.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 the Jacksonville, Douglas, or Waycross markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

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

Ameris and Ameris 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-share exchange, with a subsequent merger of

¹⁹ Ameris operates the 4th largest depository institution in the Douglas market, controlling approximately \$92.5 million in deposits, which represent 11.6 percent of market deposits. Atlantic operates the 9th largest depository institution in the same market, controlling deposits of approximately \$37.9 million, which represent approximately 4.8 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 2nd largest depository organization in the market, controlling deposits of approximately \$130.4 million, which represent approximately 16.4 percent of market deposits. The HHI for the Douglas market would increase by 110 points to 1295.

²⁰ Ameris operates the 8th largest depository institution in the Waycross market, controlling approximately \$42.0 million in deposits, which represent 4.7 percent of market deposits. Atlantic operates the 2nd largest depository institution in the same market, controlling deposits of approximately \$198.7 million, which represent approximately 22.2 percent of market deposits. On consummation of the proposed transaction, Ameris would become the largest depository organization in the market, controlling deposits of approximately \$240.7 million, which represent approximately 26.8 percent of market deposits. The HHI for the Waycross market would increase by 208 points to 1777.

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

the subsidiary depository institutions.²² The asset quality, earnings, and liquidity of both Ameris Bank and Atlantic Coast Bank are consistent with approval, and Ameris 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 Ameris, Atlantic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Ameris; 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, anti-money-laundering laws; and information provided by the commenter.

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

The Board also has considered Ameris's plans for implementing the proposal. Ameris 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. Ameris would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to operate the combined organization in a safe and sound manner, and Ameris represents that there are no anticipated changes with respect to the executive officers and directors of Ameris or Ameris Bank as a result of the proposal.

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²³ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the

²² As part of the proposed transaction, each share of Atlantic common stock would be converted into the right to receive (i) 0.17 shares of Ameris common stock together with cash in lieu of any fractional shares and (ii) \$1.39 in cash. Ameris has the financial resources to effect the proposed transaction.

²³ 12 U.S.C. § 1842(c)(2).

CRA.²⁴ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²⁵ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁶

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide 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 Ameris Bank and Atlantic Coast Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans to and/or in the rate of denials for home mortgage applications from African Americans and/or Hispanics, as compared to whites, in Atlanta, Georgia; Jacksonville, Florida; and Tallahassee, Florida, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").²⁷ The commenter also alleged that Ameris Bank engaged in predatory collection of overdraft fees and expressed concern over Ameris's recent record of mergers and acquisitions and planned branch closures.

Businesses of the Involved Institutions and Response to the Public Comment

Through its network of branches in Georgia, Florida, Alabama, and South Carolina, Ameris Bank offers a variety of products and services, including real estate loans, auto-secured and recreational-vehicle-secured loans, and home equity lines of credit. Ameris Bank also offers various deposit products for both businesses and consumers.

Atlantic Coast Bank offers a variety of loan and deposit products, with a focus on residential real estate loans and commercial real estate loans and, to a lesser extent, commercial business loans and consumer loans through its branches in Florida and Georgia. Atlantic Coast Bank's products and services also include checking and savings accounts and an alternative to payday lending.

In response to the commenter's allegations, Ameris asserts that approval of the proposed transaction is warranted based on Ameris Bank's CRA performance evaluation and Ameris Bank's involvement in other programs tailored to assist LMI individuals and first-time homebuyers in pursuing or maintaining home ownership. Ameris notes that HMDA

²⁴ 12 U.S.C. § 2901 *et seq.*

²⁵ 12 U.S.C. § 2901(b).

²⁶ 12 U.S.C. § 2903.

²⁷ 12 U.S.C. § 2801 *et seq.*

data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Ameris also asserts that HMDA data do not reflect the range of Ameris Bank's lending activities and efforts within the communities it serves. Ameris argues that the commenter's allegation of predatory overdraft fees is based on an isolated call report error for which a correction was filed by Ameris Bank after receiving clarification from the FDIC. Ameris also asserts that Ameris Bank's proposed branch closures are limited to those markets in which Ameris Bank and Atlantic Coast Bank overlap and that Ameris Bank is committed to providing reasonable access to its delivery systems throughout its assessment areas.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.²⁸ In this case, the Board considered the supervisory views of the FDIC with respect to both institutions.

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

In general, federal financial supervisors apply a lending test to evaluate the performance of a large insured depository institution, such as Ameris Bank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under 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;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

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

²⁹ 12 U.S.C. § 2906.

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).

needs of LMI individuals and geographies.³¹ 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.³² Intermediate small banks, such as Atlantic Coast 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.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 Ameris Bank

Ameris Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 3, 2016 ("Ameris Bank Evaluation").³⁵ The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.³⁶

Examiners found that the bank's lending levels reflected good responsiveness to the bank's AA needs and that the bank made a majority of its loans within its AAs. Examiners determined that the bank's borrower profile revealed good penetration among retail customers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected good penetration throughout the bank's AAs. Examiners noted that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, LMI individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that Ameris Bank made a high level of community development loans and that it used flexible lending practices in order to serve its AAs. With respect to the Atlanta market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected excellent penetration throughout the AA. With respect to the Tallahassee market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA. With respect to the Jacksonville market, examiners found that lending levels

³¹ See 12 CFR 228.22(b).

³² See 12 CFR 228.21 *et seq.*

³³ See 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 Ameris Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage, small business, and small farm loans from January 1, 2014, through June 30, 2016. In addition, examiners considered the community development loans originated by Ameris Bank between January 21, 2014, and October 3, 2016, as well as all qualified investments either purchased prior to but still outstanding as of the evaluation date or purchased during the evaluation period and all community development services performed during the evaluation period.

³⁶ The Ameris Bank Evaluation reviewed the bank's activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

reflected adequate responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA.

Examiners found that Ameris Bank had an adequate level of qualified community development investments and donations and that the bank exhibited adequate responsiveness to credit and community economic development needs. Examiners noted that the bank occasionally used innovative or complex investments to support its community development initiatives.

Examiners found that Ameris Bank's delivery systems were reasonably accessible to essentially all portions of its AAs and that, to the extent changes have been made, the bank's opening and closing of branches throughout its AAs have not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners further found that services and business hours do not vary in a way that inconveniences certain portions of its AAs, particularly LMI geographies and individuals, and that the bank provides a relatively high level of community development services within its AAs.

Ameris Bank's Efforts since the Ameris Bank Evaluation

Ameris represents that, since the Ameris Bank Evaluation, Ameris Bank has continued to meet the credit needs of its communities. Specifically, Ameris represents that Ameris Bank reported a significant volume of loans to first-time homebuyers in 2017. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

CRA Performance of Atlantic Coast Bank

Atlantic Coast Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of March 31, 2014 ("Atlantic Coast Bank Evaluation").³⁷ The bank received a "Satisfactory" rating for the Lending Test and the Community Development Test.³⁸

Examiners concluded that Atlantic Coast Bank's loan-to-deposit ratio was more than reasonable and that the bank's lending to borrowers of different incomes demonstrated a reasonable distribution. Examiners further found that a majority of the bank's loan originations and purchases was within the bank's AAs and that the bank had a reasonable geographic distribution of loans to LMI census tracts. Examiners also found that the bank's overall level and responsiveness of community development lending, investments, and services met the standards of satisfactory performance.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Ameris Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examination of Ameris Bank, which included an evaluation of the bank's compliance management system, with an emphasis on areas exhibiting the potential risk of consumer

³⁷ The Atlantic Coast Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed home mortgage and small business loans from January 1, 2009, through December 31, 2013, and community development activities from February 23, 2009, to March 31, 2014.

³⁸ The Atlantic Coast Bank Evaluation included full-scope evaluations of the Jacksonville MSA AA and the Georgia Non-MSA AA and a limited-scope review of the Savannah MSA AA.

harm. As a part of the examination, the fair lending review included an analysis of the bank's residential lending.

The Board also has considered the results of the FDIC's visitation of Atlantic Coast Bank in connection with the bank's conversion from a federal savings bank to a Florida non-member commercial bank.³⁹ The FDIC's visitation included an assessment of Atlantic Coast Bank's compliance management system, which included areas exhibiting potential consumer risk, and a limited review of the bank's CRA performance factors.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Ameris has the experience and resources to ensure that Ameris Bank helps to meet the credit needs of the communities within its AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Ameris represents that, following consummation of the proposal, existing customers of Atlantic Coast Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris Bank would provide a comparable suite of mortgage and consumer loan products to those provided by Atlantic Coast Bank prior to the merger. Ameris asserts that Ameris Bank would maintain Atlantic Coast Bank's involvement in community activities through memberships in community service, educational, and civic organizations and that Ameris Bank would use all available media, including community publications, to market its credit services to the entire community. Ameris represents that Ameris Bank's board of directors would continue to review and approve all CRA programs and that local officers would routinely analyze demographic data and loan activity to ensure that lending services are accessible to all areas of the community, including LMI neighborhoods.

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, supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."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

³⁹ Atlantic Coast Bank converted from a federal savings bank to a Florida non-member commercial bank on December 27, 2016.

⁴⁰ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

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 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.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 assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.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. 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 Ameris with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection

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 2012-2 (February 14, 2012).

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 Ameris and Atlantic offer a range of retail and commercial banking products and services. Ameris 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 Atlanta, acting under delegated authority.

By order of the Board of Governors, effective May 9, 2018.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

TriCo Bancshares Chico, California

Order Approving the Merger of Bank Holding Companies FRB Order No. 2018-13 (June 6, 2018)

TriCo Bancshares (“TriCo”), Chico, California, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act to merge with FNB Bancorp and thereby indirectly acquire FNB Bancorp’s subsidiary bank, First National Bank of Northern California (“FN Bank”), both of South San Francisco, California. Following the proposed acquisition, FN Bank would be merged into TriCo’s subsidiary bank, Tri Counties Bank (“TriCo Bank”), Chico, California.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 8,084 (February 23, 2018)).³ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

TriCo, with consolidated assets of approximately \$4.8 billion, is the 214th largest insured depository organization in the United States. TriCo controls approximately \$4.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ TriCo controls TriCo Bank, which operates only in California.⁵ TriCo is the 31st largest insured depository organization in California, controlling deposits of approximately \$3.9 billion, which represent 0.3 percent of the total deposits of insured depository institutions in that state.⁶

FNB Bancorp, with consolidated assets of approximately \$1.3 billion, is the 582nd largest insured depository organization in the United States. FNB Bancorp controls approximately \$1.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FNB Bancorp controls FN Bank, which operates only in California. FN Bank is the 68th largest insured depository organization in California, controlling deposits of approximately \$1 billion, which represent less than 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, TriCo would become the 183rd largest depository organization in the United States, with consolidated assets of approximately \$6.2 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. TriCo would control consolidated deposits of approximately \$5.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In California, TriCo would become the 28th largest

¹ 12 U.S.C. § 1841 *et seq.*

² The merger of FN Bank into TriCo Bank, which is expected to occur immediately after TriCo’s acquisition of FNB Bancorp, is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on May 29, 2018.

³ 12 CFR 262.3(b).

⁴ National deposit, market share, and ranking data are as of December 31, 2017, and asset data is as of March 31, 2018, unless otherwise noted.

⁵ The proposal does not raise interstate issues under section 3(d) of the BHC Act because California is the home state of TriCo, and FN Bank is located only in California. *See* 12 U.S.C. § 1842(d).

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

depository organization, controlling deposits of approximately \$4.9 billion, which represent 0.4 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁷ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

TriCo and FNB Bancorp have subsidiary depository institutions that compete directly in the San Francisco-Oakland-San Jose combined statistical area market (“shared market”).⁹ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that TriCo would control;¹⁰ 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”);¹¹ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the shared market. On consummation of the proposal, the shared market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and there would be only a small change in the HHI. In addition, numerous competitors would remain in the shared market.¹²

⁷ 12 U.S.C. § 1842(c)(1).

⁸ 12 U.S.C. § 1842(c)(1)(B).

⁹ The shared market is defined as the San Francisco-Oakland-San Jose combined statistical area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara Counties; the southern portions of Sonoma and Solano Counties; the northern portion of San Benito County; and the southern edge of Napa County; all of California.

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

¹¹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 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.

¹² TriCo operates the 70th largest depository institution in the shared market, controlling approximately \$19.8 million in deposits, which represent less than 0.05 percent of market deposits. FNB Bancorp operates the 23rd largest depository institution in the same market, controlling approximately \$1.04 billion in deposits, which represent approximately 0.21 percent of market deposits. On consummation of the proposal, TriCo would become the 23rd largest depository organization in the market, controlling deposits of approximately \$1.04 billion, which represent approximately 0.26 percent of market deposits. Seventy-eight banking organizations would remain in the market.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. 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 shared 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.¹³ 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.

TriCo and TriCo Bank are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposal is a bank holding company merger that is funded primarily through an exchange of shares, with a subsequent merger of the subsidiary depository institutions.¹⁴ The asset quality, earnings, and liquidity of both TriCo Bank and FNB Bank are consistent with approval, and TriCo 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 TriCo, FNB Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by TriCo; 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.

¹³ 12 U.S.C. § 1842(c)(2), (5), & (6).

¹⁴ To effect the transaction, each share of FNB Bancorp common stock would be converted into a right to receive TriCo common stock, based on an exchange ratio. Certain stock options granted by FNB Bancorp would be canceled and converted into the right to receive a cash amount. TriCo has the financial resources to effect the proposal.

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

The Board also has considered TriCo's plans for implementing the proposal. TriCo 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. TriCo would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, TriCo's management has the experience and resources to operate the combined organization in a safe and sound manner, and TriCo plans to integrate FNB Bancorp's existing management and personnel in a manner that augments TriCo's management.¹⁵

Based on all the facts of record, including TriCo'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 TriCo and FNB Bancorp in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁶ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of these communities. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").¹⁷ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹⁸ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁹

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

¹⁵ Following consummation of the proposal, TriCo's board of directors would consist of thirteen directors, including eleven members that are currently on TriCo's board of directors and two members chosen by TriCo that are currently on FNB Bancorp's board of directors. TriCo also would hire three executive officers of FNB Bancorp as employees.

¹⁶ 12 U.S.C. § 1842(c)(2).

¹⁷ 12 U.S.C. § 2901 *et seq.*

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of TriCo Bank and FN Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC and Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, information provided by TriCo, and the public comments received on the proposal.

Public Comments on the Proposal

The Board received seven letters objecting to the proposal. All seven commenters requested that approval of the proposal be conditioned on TriCo Bank adopting a revised CRA plan developed in collaboration with community organizations representing minority and LMI borrowers. The commenters requested that the CRA plan include commitments to increase lending to minority and LMI borrowers and small businesses, increase the number of TriCo Bank employees and directors that are minorities, disclose demographic information about the bank's workforce, partner with community organizations to identify and provide loans and technical assistance to minority-owned small businesses, develop a supplier diversity program, market bank products in multiple languages and in partnership with minority-owned media outlets, and accept tax identification numbers from customers to open accounts.²⁰ These commenters stated that, without a revised CRA plan, the proposal would not provide public benefits. One commenter also alleged that TriCo Bank has a poor record of lending to minority borrowers compared to its peer institutions, including in Butte County and Shasta County, both of California. Another commenter suggested that TriCo Bank should offer services designed specifically for minority and LMI borrowers, including participating in the California Small Business Loan Guarantee Program and offering more consumer lending products that compete with but are more affordable than payday loans.

Businesses of the Involved Institutions and Response to the Public Comment

TriCo operates primarily through TriCo Bank and the bank's network of branches in California. TriCo Bank offers a broad range of financial products and services to consumers and businesses, including checking, savings, money market, individual retirement, education savings, health savings, and certificate of deposit accounts; commercial, residential, small business, and consumer loans; credit card and merchant card services, treasury management, and simplified employee pension plans; and investment advisory services.

FNB Bancorp operates primarily through FN Bank and the bank's network of branches in California. FN Bank offers a broad range of financial products to consumers and businesses, including checking, savings, money market, health savings, and certificate of deposit accounts; commercial, residential, small business, and consumer loans; merchant card services and treasury management; and investment advisory services.

²⁰ The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. See, e.g., *Howard Bancorp, Inc.*, FRB Order No. 2018-05 at 9 fn. 21 (February 12, 2018); *Sandy Spring Bancorp, Inc.*, FRB Order No. 2017-32 at 12 fn. 31 (November 22, 2017); *United Bancshares, Inc.*, FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 fn. 50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 fn. 54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA Assessment Areas.

TriCo asserts that approval of the proposal is warranted based on the banks' CRA performance evaluations and compliance with statutory and regulatory requirements related to CRA and fair lending and on TriCo Bank's history of engaging members of the community about their banking needs. TriCo asserts that TriCo Bank and FN Bank have consistently met the requirements of the CRA and that TriCo Bank is committed to continuing to meet its obligations under the CRA after consummation of the transaction.

With respect to the commenters' request for a CRA plan and related assertions, TriCo notes that TriCo Bank has a public CRA plan that was created in consultation with community organizations and includes goals for the bank related to lending to LMI borrowers. TriCo states that TriCo Bank has a strong history of lending to small businesses and would continue to prioritize lending to small businesses upon consummation of the proposal. TriCo maintains that TriCo Bank has complied with all legal requirements concerning hiring, reporting workforce demographic information, and collaborating with diversity suppliers. TriCo asserts that it employs multilingual employees and has collaborated with nonprofit organizations in its existing banking markets. TriCo also states that it is forming an advisory panel of community leaders in the market currently served by FN Bank to learn about and address the market's banking needs.

TriCo disputes the allegation of one commenter that TriCo Bank's record of lending to minority borrowers is poor. TriCo states that the commenter's analysis is flawed because the analysis relied on a small sample, and TriCo notes that the commenter did not fully disclose the methodology for the analysis.

TriCo also maintains that it currently offers the products and services requested by some of the commenters. For example, TriCo states that TriCo Bank has invested in community development financial institutions that provide small dollar loans to consumers as an alternative to payday loans and opens bank accounts using individual tax identification numbers. TriCo also states that it has existing programs to assist small business borrowers in obtaining loans, including programs that involve loans guaranteed by the Small Business Administration.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers a substantial amount of information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²¹ In this case, the Board considered the supervisory views of the FDIC with respect to TriCo Bank and of the OCC with respect to FN Bank.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²² An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

²¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²² 12 U.S.C. § 2906.

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. This 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"),²³ 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;²⁴ (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.²⁵ Large institutions, such as TriCo Bank, are also subject to an investment test that evaluates the number and amounts of qualified investments that benefit their AAs and to a service test that evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.²⁶ Intermediate small banks, such as FN 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.²⁷

CRA Performance of TriCo Bank

TriCo Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of April 20, 2015 ("TriCo Bank Evaluation").²⁸ The bank received a "High Satisfactory" rating for the Investment Test and "Low Satisfactory" ratings for the Lending Test and Service Test.²⁹ TriCo Bank's performance in the Chico MSA was weighted most heavily by examiners due to the bank's volume of lending and deposit activity in this area.

²³ 12 U.S.C. § 2801 *et seq.*

²⁴ 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).

²⁵ *See* 12 CFR 228.22(b).

²⁶ *See* 12 CFR 228.21 *et seq.*

²⁷ 12 CFR 228.26(c).

²⁸ The TriCo Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA, and small loans made to businesses and farms as reported under CRA data collection requirements, from 2013 and 2014. The evaluation period for community development loans, investments, and services was January 7, 2013, through April 20, 2015.

²⁹ The TriCo Bank Evaluation included full-scope evaluations of the Chico Metropolitan Statistical Area ("MSA"), Redding MSA, and Yuba City MSA, all in California. Limited-scope evaluations were performed for the bank's other AAs.

Examiners found that the bank made a majority of its loans within its 23 AAs and that the bank's lending levels reflected adequate responsiveness to the credit needs of the AAs. Examiners found that the distribution of borrowers reflected adequate penetration among retail customers of different income levels and businesses and farm customers of various revenue sizes. Examiners found that the geographic distribution of loans reflected good penetration throughout the bank's AAs. Examiners also found that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and very small businesses.

In the Chico MSA, which includes an area of concern to one commenter, examiners found that TriCo Bank's lending levels reflected adequate responsiveness to credit needs. Examiners found that TriCo Bank had the highest market share of small business and small farm originations of all lenders reporting CRA lending data in the Chico MSA during the examination review period. Examiners found that the geographic distribution of loans reflected good penetration throughout the Chico MSA, noting good penetration for small business loans, adequate penetration for home mortgage loans, and poor penetration for small farm loans. Examiners found that the distribution of borrowers reflected overall adequate penetration among retail customers of different income levels and among business and farm borrowers of different revenue sizes, including adequate penetration for small business loans and home mortgage loans and good penetration for small farm loans.

In the Redding MSA, which includes another area of concern to the same commenter, examiners found that TriCo Bank's lending levels reflected adequate responsiveness to credit needs. Examiners found that TriCo Bank had the highest market share of small business and small farm originations of all lenders reporting CRA lending data in the Redding MSA during the examination review period. Examiners found that the geographic distribution of loans reflected good penetration throughout the Redding MSA, including overall good penetration for small business loans, good penetration for mortgage loans, and excellent penetration for small farm loans. Examiners found that the

distribution of borrowers reflected overall good penetration among retail customers of different income levels and business and among farm borrowers of different revenue sizes, including adequate penetration for small business loans and good penetration for home mortgage and small farm loans.

In all of its AAs, examiners found that TriCo Bank had a significant level of community development investments that reflected good responsiveness to credit and community economic development needs. Examiners found that the bank made significant use of innovative and complex investments to support community development initiatives, including for affordable housing and economic development.

Examiners found that TriCo Bank's delivery systems were accessible to all portions of the bank's AAs. Examiners found that the bank's branches were reasonably distributed and that the bank's services and hours of operation did not vary in a way that inconvenienced any portion of the bank's AAs, including in LMI geographies. Examiners found that TriCo Bank provided an adequate level of community development services.

TriCo Bank's Efforts Since the TriCo Bank Evaluation

TriCo states that, since the TriCo Bank Evaluation, TriCo Bank has engaged in significant activities to continue and improve its CRA performance. Specifically, TriCo Bank has made commercial loans to develop affordable housing and continued to invest in projects receiving Federal Low Income Housing Tax Credits. TriCo Bank has invested in community development financial institutions that invest in affordable housing and small busi-

nesses. TriCo Bank has also assisted various nonprofit organizations in obtaining grants from the Federal Home Loan Bank of San Francisco to develop affordable housing. TriCo Bank's employees also have provided technical support to nonprofit organizations that focus on developing affordable housing and to small businesses and teaching financial literacy. TriCo further states that TriCo Bank has entered into a public CRA plan to, among other things, obtain an overall "Outstanding" CRA rating; meet or exceed lending by its competitors to LMI borrowers, small businesses, and small farms; and achieve specific levels of community development lending and CRA investments.

CRA Performance of FN Bank

FN Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 14, 2016 ("FN Bank Evaluation").³⁰ The bank received "Satisfactory" ratings for the Lending Test and Community Development Test.³¹

Examiners found that FN Bank achieved reasonable penetration in its lending to borrowers of different income levels and that the geographic distribution of the bank's loans throughout census tracts represented excellent dispersion. Examiners found that FN Bank's loan-to-deposit ratio was reasonable and that the majority of the bank's loans are made within its AAs.

Examiners found that FN Bank's community development activities demonstrated adequate responsiveness to the community development needs of its AAs. Examiners found that FN Bank's community development lending and investments demonstrated adequate and excellent responsiveness, respectively, to community development needs in the bank's AAs.

Additional Supervisory Views

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

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. TriCo represents that, following consummation of the proposal, existing customers of TriCo Bank and FN Bank would benefit from an expanded branch and ATM network and a broader range of financial products and services.

³⁰ The FN Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed home mortgage and small business loans originated or purchased from January 1, 2013, through December 31, 2015. The evaluation period for community development lending, investments, and services was from January 7, 2013, to March 14, 2016.

³¹ The FN Bank Evaluation included a full-scope evaluation of the San Francisco-Redwood City-South San Francisco Metropolitan District. A limited-scope evaluation was conducted in the bank's other AA.

TriCo maintains that existing customers of FN Bank would benefit from participation in TriCo Bank's program that offers customers access to a large network of ATMs for no fee. TriCo represents that the combined organization would achieve greater economies of scale that would result in expanded services at more affordable prices. TriCo also notes that the combined organization would have additional capital to support a larger legal lending limit.

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 and OCC, confidential supervisory information, information provided by TriCo, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."³²

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³³ 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.³⁴

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

³² Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. § 1842(c)(7).

³³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁵

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.³⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress. In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.³⁷ 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 TriCo 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. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of San Francisco, acting under delegated authority.

³⁵ 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.

³⁶ As noted, TriCo and FNB Bancorp offer a range of retail and commercial banking products and services. TriCo 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.

³⁷ The Board construes the comments received on the proposal to include requests that the Board hold public hearings 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. 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 commenters' requests in light of all of the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do 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 requests do not demonstrate why the written comments do not present the commenters' 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 requests for public hearing on the proposal are denied.

By order of the Board of Governors, effective June 6, 2018.

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

Ann E. Misback
Secretary of the Board

Ameris Bancorp
Moultrie, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2018-14 (June 13, 2018)

Ameris Bancorp (“Ameris”), Moultrie, Georgia, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Hamilton State Bancshares, Inc. (“Hamilton”), and thereby indirectly acquire Hamilton State Bank, both of Hoschton, Georgia. Hamilton State Bank would be merged into Ameris’s subsidiary bank, Ameris Bank, Moultrie, Georgia.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 10,852 (March 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.

Ameris, with consolidated assets of approximately \$7.9 billion, is the 158th largest insured depository organization in the United States. Ameris controls approximately \$6.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Ameris controls Ameris Bank, which operates in Georgia, Florida, Alabama, and South Carolina. Ameris is the 14th largest insured depository organization in Georgia, controlling deposits of approximately \$2.8 billion, which represent 1.2 percent of the total deposits of insured depository institutions in that state.⁶

Hamilton, with consolidated assets of approximately \$1.8 billion, is the 430th largest insured depository organization in the United States. Hamilton controls approximately \$1.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Hamilton controls Hamilton State Bank, which operates only in Georgia. Hamilton is the 19th largest insured depository organization in Georgia, controlling deposits of approximately \$1.5 billion, which represent 0.6 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Ameris would become the 136th largest insured depository organization in the United States, with consolidated assets of approximately \$9.6 billion,⁷ which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total deposits of approximately \$8.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, Ameris would become the 9th largest insured depository organization, controlling deposits of approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Hamilton State Bank into Ameris Bank is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data are as of December 31, 2017, unless otherwise noted.

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

⁷ Consolidated assets are as of March 31, 2018, and do not reflect Ameris’s recent acquisition of Atlantic Coast Financial Corporation. *See Ameris Bancorp*, FRB Order No. 2018-12 (May 9, 2018).

\$4.4 billion, which represent 1.8 percent of the total deposits of insured depository institutions in the state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁸ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁹

Ameris Bank and Hamilton State Bank compete directly in the Atlanta, Georgia, banking market (“Atlanta market”).¹⁰ 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 Ameris would control;¹¹ 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”);¹² and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Atlanta market. On consummation of the proposal, the Atlanta market would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The HHI would not change, and numerous competitors would remain in the market.¹³

⁸ 12 U.S.C. § 1842(c)(1).

⁹ 12 U.S.C. § 1842(c)(1)(B).

¹⁰ The Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton Counties, Hall County minus the town of Clermont, the towns of Auburn and Winder in Barrow County, and Luthersville in Meriwether County, all in Georgia.

¹¹ Local deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹² Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹³ Ameris operates the 57th largest depository institution in the Atlanta market, controlling approximately \$81.1 million in deposits, which represent 0.05 percent of market deposits. Hamilton operates the 17th largest depository institution in the same market, controlling deposits of approximately \$1.2 billion, which represent approximately 0.72 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 17th largest depository organization in the market, controlling deposits of approximately \$1.3 billion, which represent approximately 0.77 percent of market deposits. The HHI for the Atlanta market would remain unchanged at 1616, and 81 other banking organizations would remain in the market.

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. 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 Atlanta 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.¹⁴ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Ameris and Ameris 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-share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁵ The asset quality, earnings, and liquidity of both Ameris Bank and Hamilton State Bank are consistent with approval, and Ameris 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 Ameris, Hamilton, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Ameris; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenter.

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

¹⁵ As part of the proposed transaction, each share of Hamilton common stock would be converted into the right to receive (i) 0.16 shares of Ameris common stock together with cash in lieu of any fractional shares and (ii) \$0.93 in cash. Ameris has the financial resources to effect the proposed transaction.

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

The Board also has considered Ameris's plans for implementing the proposal. Ameris 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. Ameris would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to operate the combined organization in a safe and sound manner, and Ameris represents that there are no anticipated changes with respect to the executive officers and directors of Ameris or Ameris Bank as a result of the proposal.

Based on all of the facts of record, including Ameris'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 Ameris and Hamilton 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.¹⁶ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").¹⁷ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,¹⁸ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁹

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers 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 institu-

¹⁶ 12 U.S.C. § 1842(c)(2).

¹⁷ 12 U.S.C. § 2901 *et seq.*

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

tion'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 Ameris Bank and Hamilton State Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, and the public comment received on the proposal.

Public Comment on the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Ameris Bank to, and/or in the rate of denials for home mortgage applications from, African Americans and/or Hispanics, as compared to whites, in Atlanta, Georgia; Jacksonville, Florida; and Tallahassee, Florida, based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").²⁰ The commenter also alleged that Ameris Bank engaged in predatory collection of overdraft fees and expressed concern over Ameris's recent record of mergers and acquisitions. The allegations against Ameris were considered by the Board in its May 9, 2018, approval of Ameris's application to acquire Atlantic Coast Financial Corporation²¹ and by the FDIC in its April 24, 2018, approval of the related bank merger application.

In addition, the commenter alleged, based on HMDA data, disparities in Hamilton State Bank's rate of denials to African Americans in Atlanta, Georgia. The commenter also alleged disparities in the level of applications from African Americans in Atlanta, which it attributed to disparate marketing by Hamilton State Bank.

Businesses of the Involved Institutions and Response to the Public Comment

Through its network of branches in Georgia, Florida, Alabama, and South Carolina, Ameris Bank offers a variety of products and services, including real estate loans, auto-secured and recreational-vehicle-secured loans, and home equity lines of credit. Ameris Bank also offers various deposit products for both businesses and consumers.

Hamilton State Bank offers a full line of consumer and business loan and deposit products, as well as related financial services, through its branches in Georgia. Hamilton State Bank's products and services include commercial and residential real estate loans, equipment financing, checking and savings accounts, certificates of deposit, and retirement accounts.

In response to the commenter's allegations, Ameris asserts that approval of the proposed transaction is warranted based on Ameris Bank's CRA performance evaluation and Ameris Bank's involvement in other programs tailored to assist LMI individuals and first-time homebuyers in pursuing or maintaining homeownership. Ameris notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Ameris also asserts that HMDA data do not reflect the range of Ameris Bank's lending activities and efforts within the communities it serves. Ameris argues that the commenter's allegation of predatory overdraft fees is based on an isolated call report error for which a correction was filed by Ameris Bank after receiving clarification from the FDIC.

²⁰ 12 U.S.C. § 2801 *et seq.*

²¹ See *Ameris Bancorp.*, FRB Order No. 2018-12 at 11 (May 9, 2018).

In response to the commenter's allegations regarding Hamilton State Bank, Ameris asserts that Hamilton State Bank has traditionally focused on commercial banking and that its mortgage products are limited to qualified mortgages that include conventional fixed-rate and ARM loans and are not actively pursued by Hamilton State Bank. Ameris also asserts that Hamilton State Bank's CRA performance is consistent with approval and that Hamilton State Bank has not received any fair lending complaints.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers a substantial amount of information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.²² In this case, the Board considered the supervisory views of the FDIC with respect to both institutions.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²³ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Ameris Bank and Hamilton State Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates the institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under 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;²⁴ (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.²⁵ 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

²² See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

²³ 12 U.S.C. § 2906.

²⁴ 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).

²⁵ See 12 CFR 228.22(b).

effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.²⁶

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.²⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Ameris Bank

Ameris Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of October 3, 2016 (“Ameris Bank Evaluation”).²⁸ The bank received “High Satisfactory” ratings for the Lending Test and the Service Test and a “Low Satisfactory” rating for the Investment Test.²⁹

Examiners found that the bank's lending levels reflected good responsiveness to the bank's AA needs and that the bank made a majority of its loans within its AAs. Examiners determined that the bank's borrower profile revealed good penetration among retail customers of different income levels and businesses of different sizes. Examiners further found that the geographic distribution of the bank's loans reflected good penetration throughout the bank's AAs. Examiners noted that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its AAs, LMI individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that Ameris Bank made a high level of community development loans and that it used flexible lending practices in order to serve its AAs. With respect to the Atlanta market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected excellent penetration throughout the AA. With respect to the Tallahassee market, examiners found that lending levels reflected good responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA. With respect to the Jacksonville market, examiners found that lending levels reflected adequate responsiveness to credit needs and that HMDA data reflected good penetration throughout the AA.

Examiners found that Ameris Bank had an adequate level of qualified community development investments and donations and that the bank exhibited adequate responsiveness to credit and community economic development needs. Examiners noted that the bank occasionally used innovative or complex investments to support its community development initiatives.

²⁶ See 12 CFR 228.21 *et seq.*

²⁷ 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.

²⁸ The Ameris Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage, small business, and small farm loans from January 1, 2014, through June 30, 2016. In addition, examiners considered the community development loans originated by Ameris Bank between January 21, 2014, and October 3, 2016, as well as all qualified investments either purchased prior to but still outstanding as of the evaluation date or purchased during the evaluation period and all community development services performed during the evaluation period.

²⁹ The Ameris Bank Evaluation reviewed the bank's activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

Examiners found that Ameris Bank's delivery systems were reasonably accessible to essentially all portions of its AAs and that, to the extent changes had been made, the bank's opening and closing of branches throughout its AAs had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners further found that services and business hours did not vary in a way that inconvenienced certain portions of its AAs, particularly LMI geographies and individuals, and that the bank provided a relatively high level of community development services within its AAs.

Ameris Bank's Efforts since the Ameris Bank Evaluation

Ameris represents that, since the Ameris Bank Evaluation, Ameris Bank has continued to meet the credit needs of its communities. Specifically, Ameris represents that Ameris Bank reported a significant volume of loans to first-time homebuyers in 2017. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

CRA Performance of Hamilton State Bank

Hamilton State Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 19, 2015 ("Hamilton State Bank Evaluation").³⁰ The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and the Service Test.³¹

Examiners concluded that Hamilton State Bank's lending performance reflected good responsiveness to the credit needs in its AAs and that a high percentage of the bank's loans were originated in its AAs. Examiners found that the geographic distribution of the bank's home mortgage and small business loans reflected an excellent dispersion throughout its AAs. Examiners also found that the bank's distribution of loans among individuals of different income levels and businesses of different sizes was good. Examiners noted that the bank had an adequate level of qualified community development investments and donations and that the bank showed adequate responsiveness to credit and community economic development needs. Finally, examiners found the bank's delivery systems to be reasonably accessible to essentially all portions of the bank's AAs, including in LMI areas and to LMI individuals.

Views of the FDIC

The Board has consulted with the FDIC regarding Ameris Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger application underlying this proposal and, in so doing, considered the comment received by the Board. The Board has considered the results of the FDIC's most recent consumer compliance examination of Ameris Bank, which included an evaluation of the bank's compliance management system, with an emphasis on areas exhibiting the potential risk of consumer harm. As a part of the examination, the fair lending review included an analysis of the bank's residential lending.

The Board also has considered the results of the FDIC's most recent consumer compliance examination of Hamilton State Bank, which included a risk-focused review of the bank's

³⁰ The Hamilton State Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed small business loans from January 1, 2014, through June 30, 2015, and home mortgage loans reported on the bank's 2013, 2014, and year-to-date 2015 HMDA Loan Application Registers.

³¹ The Hamilton State Bank Evaluation included full-scope evaluations of the Atlanta Metropolitan Statistical Area (MSA) AA and the Gainesville MSA AA.

compliance management system, with an emphasis on areas exhibiting greater potential risk of consumer harm, and a fair lending review.

The Board has taken the consultations with the FDIC and the information discussed above into account in evaluating the proposal, including in considering whether Ameris has the experience and resources to ensure that Ameris Bank helps to meet the credit needs of the communities within its AAs.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Ameris represents that, following consummation of the proposal, existing customers of Hamilton State Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris Bank would provide a substantially similar suite of retail and commercial banking services and products to those provided by Hamilton State Bank prior to the merger. Ameris asserts that Ameris Bank would strive to maintain a strong working relationship with city and county governments in the former Hamilton State Bank markets and that Ameris Bank would use all available media, including community publications, to market its credit services to the entire community. Ameris represents that Ameris Bank's board of directors would continue to review and approve all CRA programs and that local officers would routinely analyze demographic data and loan activity to ensure that lending services are accessible to all areas of the community, including LMI neighborhoods. Ameris indicated that Ameris Bank's CRA and consumer compliance programs and policies would be implemented at the combined institution.

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, supervisory views of the FDIC, confidential supervisory information, information provided by Ameris, the public comment on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."³²

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

³² Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

resulting firm.³³ 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.³⁴

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.³⁵

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.³⁶ 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 Ameris 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.

³³ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

³⁵ 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.

³⁶ Ameris and Hamilton offer a range of retail and commercial banking products and services. Ameris 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.

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 Atlanta, acting under delegated authority.

By order of the Board of Governors, effective June 13, 2018.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under International Banking Act

JN Bank Limited
Kingston, Jamaica

Order Approving the Establishment of a Representative Office
FRB Order No. 2018-10 (April 13, 2018)

JN Bank Limited (“JN Bank”), Kingston, Jamaica, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Tamarac, Florida (the “Florida Representative Office”), in connection with a corporate reorganization. The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Tamarac, Florida (*Sun-Sentinel*, January 14, 2018). The time for submitting comments has expired, and no comments were received.

JN Bank, with assets of approximately \$1.2 billion, is the third largest deposit-taking financial institution in Jamaica.² JN Bank is a licensed commercial bank that offers banking services across 35 locations in Jamaica and has additional representative offices in the United Kingdom and Canada. JN Bank is an indirect subsidiary of The Jamaica National Group Limited (“JN Group”), Kingston, Jamaica.³ JN Group, with consolidated assets of approximately \$1.6 billion, is a mutual holding company that offers a variety of products and services through its subsidiaries.⁴ JN Bank was formed as part of a corporate reorganization that involved its predecessor institution, Jamaica National Building Society (“JNBS”).⁵ As part of the reorganization, on February 1, 2017, JNBS converted from a building society to a commercial bank under Jamaican law and was renamed JN Bank Limited. JN Bank has filed this application to establish the Florida Representative Office under the IBA.⁶

The Florida Representative Office would continue to engage in representational and administrative activities, including marketing and promotional activities; loan solicitation activities; providing technical assistance, such as aiding customers in completing loan applications, transmitting completed loan applications to JN Bank’s headquarters in Jamaica for approval, and answering customer inquiries; and research and consulting activities. JN

¹ 12 U.S.C. § 3107(a).

² Asset data are as of October 2017. Ranking data are as of June 2017.

³ JN Bank is a wholly owned subsidiary of JN Financial Group Limited (“JN Financial”), which is responsible for oversight of the financial activities of JN Group. JN Financial is a wholly owned subsidiary of JN Group.

⁴ JN Group is owned by its members, which are customers of JN Bank. Each member of JN Group has one vote on matters subject to membership approval. JN Group’s subsidiaries offer a variety of products and services, including banking and financial services, remittance services, life insurance, advertisement services, information technology services, and vehicle management services. JN Group has one nonbank subsidiary in the United States, JN Money Services (USA) Incorporated, which is a money transmitter licensed in seven states and the District of Columbia.

⁵ The Board approved JNBS to establish the representative office in Tamarac, Florida, in 2002. *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002).

⁶ JN Bank is licensed by the Florida Office of Financial Regulation to operate the Florida Representative Office.

Bank proposes to expand the activities of the Florida Representative Office to include the solicitation of deposits.⁷

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁸ The Board also considers additional standards set forth in the IBA and Regulation K.⁹

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities and the operating record of the applicant bank.¹⁰ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, JN Bank has provided certain commitments that limit the activities of the Florida Representative Office. It has committed to engage only in activities permissible for a representative office under Regulation K. In particular, JN Bank has committed that the Florida Representative Office would not make credit decisions or any other decisions that bind JN Bank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The

⁷ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity, but it can solicit deposits for the bank's head office. 12 CFR 211.24(d)(1)(i).

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

⁹ See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank, including the bank's experience and capacity to engage in international banking; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. In the case of a foreign bank that presents a risk to the stability of the United States, the Board also may take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

¹⁰ See 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that "[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers and markets than do branches or agencies." 66 *Fed. Reg.* 54346, 54365 (October 26, 2001).

Florida Representative Office also would not share office space or premises with JN Money Services (USA) Incorporated, JN Group's money transmitter subsidiary in the United States. The Florida Representative Office would engage only in the activities indicated in its application to the Board, and it is planned that the office would not be staffed by more than three employees.

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

With respect to supervision by home country authorities, the Board has considered that JN Bank is supervised by the Bank of Jamaica (the "BOJ"). Under Jamaican law, a financial group that includes a deposit-taking institution is required to form a financial holding company ("FHC") parent, which is supervised by the BOJ. JN Bank is wholly owned by its FHC parent, JN Financial.

The BOJ supervises banking organizations through a combination of on-site examinations and off-site monitoring. On-site examinations are risk-based and focus on credit administration and credit risk management; capital management; liquidity risk management; corporate governance; and internal controls, including to ensure compliance with anti-money-laundering and counter-terrorist-financing laws. Off-site monitoring includes a review of periodic reports submitted by supervised entities. JN Group and its subsidiaries are required to submit consolidated financial statements, which are reviewed by the BOJ. In addition, JN Group and JN Bank are subject to an annual review by external auditors. The BOJ has the authority to request information from the relevant external auditors in connection with its supervisory authority. When there is evidence of unsafe and unsound practices by deposit-taking institutions, the BOJ has the authority to impose sanctions.

The Board has previously considered the supervisory regime in Jamaica for financial institutions in connection with applications involving Jamaican building societies.¹¹ JN Bank, as a licensed commercial bank, is subject to supervision on substantially similar terms as those applicable to Jamaican building societies. Based on all the facts of record, including the commitments provided by JN Bank limiting the activities of the Florida Representative Office, it has been determined that JN Bank is subject to a supervisory framework that is consistent with the current and proposed activities of the Florida Representative Office, taking into account the nature of such activities.

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.¹²

Jamaica is a member of the Caribbean Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Jamaica has created legislative and regulatory

¹¹ See Board letter to Charles L. Stutts, Esq., dated February 8, 2018. See also *Victoria Mutual Building Society*, 93 *Federal Reserve Bulletin* C106 (2007); *Jamaica National Building Society*, 88 *Federal Reserve Bulletin* 59 (2002).

¹² See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2).

standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offence in Jamaica, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. The BOJ enforces these requirements with respect to Jamaican banks, including JN Bank. JN Bank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for anti-money-laundering compliance.

JN Bank appears to have the experience and capacity to support the Florida Representative Office. In addition, JN Bank has established controls and procedures for the representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Given JN Bank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent with approval of JN Bank's application to establish the Florida Representative Office.

JN Bank has committed to make available to the Board such information on the operations of JN Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended,¹³ and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, JN Bank has committed to cooperate with the Board to obtain any necessary waivers or exemptions that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the BOJ may share information on JN Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that JN Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the BOJ has no objection to the establishment of the Florida Representative Office.

The Board has also considered whether JN Bank's proposal would present a risk to the stability of the United States. The proposal would not appear to affect the financial stability of the United States. In particular, the absolute and relative size of JN Bank in its home country; the scope of JN Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising JN Bank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by JN Bank, JN Bank's application to establish the Florida Representative Office is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁴ Should any restrictions on access to information on the operations or activities of JN Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by JN Bank or its affiliates with applicable federal statutes, the Board may require termination of any of JN Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by JN Bank with the conditions imposed in this order and the commitments made to the Board in

¹³ 12 U.S.C. § 1841 *et seq.*

¹⁴ 12 CFR 265.7(d)(12).

connection with this application.¹⁵ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective April 13, 2018.

Ann E. Misback
Secretary of the Board

¹⁵ The Board's authority to approve the establishment of the Florida Representative Office parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida or its agent, the Florida Office of Financial Regulation, to license the Florida Representative Office in accordance with any terms or conditions that they may impose.

Order Issued Under Section 3 of the Bank Holding Company Act, Bank Merger Act, & Federal Reserve Act

Arvest Bank Group, Inc.
Bentonville, Arkansas

Arvest Holdings, Inc.
Bentonville, Arkansas

Arvest Bank
Fayetteville, Arkansas

Order Approving the Acquisition of a Bank Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2018-09 (April 2, 2018)

Arvest Bank, Fayetteville, Arkansas, a state member bank, and its parent companies, Arvest Bank Group, Inc., and Arvest Holdings, Inc. (together, with Arvest Bank, “Arvest”), both of Bentonville, Arkansas, and both bank holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ have requested the Board’s approval under section 3 of the BHC Act² to acquire Bear State Financial, Inc. (“Bear State”), a bank holding company, and thereby indirectly acquire Bear State Bank, a state member bank, both of Little Rock, Arkansas.

In addition, Arvest Bank has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Bear State Bank, with Arvest Bank as the surviving entity.³ Arvest 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 Bear State Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 50426 (October 31, 2017)).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.

Arvest, with consolidated assets of approximately \$16.8 billion, is the 93rd largest depository organization in the United States. Arvest controls approximately \$14.5 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 Arvest controls Arvest Bank, which operates in Arkansas, Kansas, Missouri, and Oklahoma. Arvest is the largest insured depository organization in Arkansas, controlling approximately \$8.5 billion in deposits, which represent approximately 13.2 percent of the total deposits of insured depository

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

⁶ National deposit, market share, and ranking data are as of September 30, 2017, and asset data is as of December 31, 2017, unless otherwise noted.

institutions in the state.⁷ Arvest is the 19th largest insured depository organization in Missouri, controlling approximately \$1.3 billion in deposits, which represent approximately 0.7 percent of the total deposits of insured depository institutions in the state. Arvest is the 4th largest insured depository organization in Oklahoma, controlling approximately \$4.9 billion in deposits, which represent approximately 5.7 percent of the total deposits of insured depository institutions in the state.

Bear State, with consolidated assets of approximately \$2.2 billion, is the 368th largest insured depository organization in the United States. Bear State 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. Bear State controls Bear State Bank, which operates in Arkansas, Missouri, and Oklahoma. Bear State is the 10th largest insured depository organization in Arkansas, controlling approximately \$1.3 billion in deposits, which represent approximately 2.0 percent of the total deposits of insured depository institutions in the state. Bear State is the 66th largest insured depository organization in Missouri, controlling approximately \$358.3 million in deposits, which represent approximately 0.2 percent of the total deposits of insured depository institutions in the state. Bear State is the 167th largest insured depository organization in Oklahoma, controlling approximately \$55.5 million in deposits, which represent approximately 0.1 percent of the total deposits of insured depository institutions in the state.

On consummation of the proposal, Arvest would become the 89th largest insured depository organization in the United States, with consolidated assets of approximately \$18.8 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Arvest would control consolidated deposits of approximately \$16.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Arkansas, Arvest would remain the largest insured depository organization, controlling deposits of approximately \$9.7 billion, which represent approximately 15.2 percent of the total deposits of insured depository institutions in the state. In Missouri, Arvest would become the 15th largest insured depository organization, controlling deposits of approximately \$1.7 billion, which represent approximately 0.9 percent of the total deposits of insured depository institutions in the state. In Oklahoma, Arvest would remain the 4th largest insured depository organization, controlling deposits of approximately 5.0 billion, which represent approximately 5.7 percent of total deposits of insured depository institutions in the 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 Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.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

⁷ State deposit, market share, and ranking data are as of June 30, 2017, unless otherwise noted. 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).

total deposits of insured depository institutions in the United States¹⁰ 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.¹¹

For purposes of the BHC Act, the home state of Arvest is Arkansas, and Bear State Bank is located in Arkansas, Missouri, and Oklahoma.¹² Arvest is well capitalized and well managed under applicable law, and Arvest Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹³ Missouri has a five-year minimum age requirement,¹⁴ and Oklahoma has no minimum age requirement. Bear State Bank has been in existence for more than five years.

On consummation of the proposed transaction, Arvest would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Arkansas imposes a 25 percent limit,¹⁵ Missouri imposes a 13 percent limit,¹⁶ and Oklahoma imposes a 20 percent limit,¹⁷ on the total amount of in-state deposits that a single banking organization may control. In each of these states, the only states in which Arvest and Bear State have overlapping operations, the combined 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 Arvest’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all of 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 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.¹⁸ 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.¹⁹

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

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

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

¹³ 12 U.S.C. § 2901 *et seq.*

¹⁴ *See* Mo. Rev. Stat. § 362.077(1).

¹⁵ Ark. Code Ann. § 23-48-406.

¹⁶ Mo. Rev. Stat. § 362.915.

¹⁷ 6 Okl. St. Ann. § 501.1.

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

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

Arvest and Bear State have subsidiary depository institutions that compete directly in the Mountain Home, Arkansas, banking market (“Mountain Home market”); the Fayetteville/Rogers, Arkansas, banking market (“Fayetteville/Rogers market”); the Hot Springs, Arkansas, banking market (“Hot Springs market”); the Harrison, Arkansas, banking market (“Harrison market”); the Little Rock, Arkansas, banking market (“Little Rock market”); the Mena, Arkansas, banking market (“Mena market”); the Springfield, Missouri, banking market (“Springfield market”); and the Branson, Missouri, banking market (“Branson market”).²⁰ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits of insured depository institutions in the market (“market deposits”) that Arvest would control;²¹ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the U.S. Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);²² other characteristics of the markets; and, as discussed below, commitments made by Arvest to divest one branch in the Mena 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 Mountain Home, Hot Springs, Little Rock, Springfield, and Branson markets. On consummation of the proposal, the Springfield market would remain unconcentrated, the Branson market would become moderately concentrated, and the Mountain Home, Hot Springs, and Little Rock markets would remain moderately concentrated. In each of these banking markets, numerous competitors would remain.

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Fayetteville/Rogers, Harrison, and Mena markets warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines or would result in the market deposit share of Arvest exceeding 35 percent when using initial competitive screening data.

²⁰ All of these banking markets are defined in Appendix B, except for the Fayetteville/Rogers, Harrison, and Mena markets, which are defined in the discussion below.

²¹ Local deposit and market share data are as of June 30, 2017, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

²² 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.

Fayetteville/Rogers market

Using initial screening data, Arvest is the largest competitor in the Fayetteville/Rogers market, controlling approximately \$5.3 billion in deposits, which represent approximately 49.2 percent of market deposits.²³ Bear State is the 20th largest depository organization in the Fayetteville/Rogers market, controlling approximately \$109.9 million in deposits, which represent approximately 1.0 percent of market deposits. On consummation of the proposal, Arvest would remain the largest depository organization in the Fayetteville/Rogers market, controlling approximately \$5.4 billion in market deposits, which would represent approximately 50.2 percent of market deposits. The HHI in this market would increase by 100 points, from 2571 to 2671.

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 Fayetteville/Rogers market.²⁴ Factors indicate that the increase in concentration in the Fayetteville/Rogers market, as measured by the above market share, overstates the potential competitive effects of the proposal in the market. In particular, one credit union exerts a competitive influence in the Fayetteville/Rogers 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.²⁵ The Board finds that these circumstances warrant including the deposits of this 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, Arvest would control approximately 49.0 percent of market deposits, and the HHI would increase by 100 points, from 2556 to 2656. Although the adjusted market share and market concentration levels still exceed the DOJ Bank Merger Guidelines, an additional factor indicates that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, 40 depository institutions would compete with Arvest in the Fayetteville/Rogers market. The presence of these viable competitors suggests that Arvest would have limited ability unilaterally to offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on Arvest in the market.

Harrison market

Using initial screening data, Arvest is the 4th largest competitor in the Harrison market, controlling approximately \$116.5 million in deposits, which represent approximately 11.8 percent of market deposits.²⁶ Bear State is the 3rd largest depository organization in

²³ The Fayetteville/Rogers market is defined as Benton, Madison, and Washington counties, all of Arkansas; McDonald County, Missouri; and the town of West Siloam Springs in Delaware County, Oklahoma.

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

²⁵ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g.*, *KeyCorp.*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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).

²⁶ The Harrison market is defined as Boone, Newton, and Searcy Counties, all of Arkansas; and the western half of Marion County, Arkansas (excluding the cities of Yellville and Summit).

the Harrison market, controlling approximately \$168.9 million in deposits, which represent approximately 17.1 percent of market deposits. On consummation of the proposal, Arvest would become the largest depository organization in the Harrison market, controlling approximately \$285.4 million in market deposits, which would represent approximately 28.9 percent of market deposits. The HHI in this market would increase by 404 points, from 1562 to 1966.

Factors indicate that the increase in concentration in the Harrison market, as measured by the above market share and change in HHI, overstates the potential competitive effects of the proposal in the market. In particular, after consummation of the proposal, 10 depository institutions would compete with Arvest in the Harrison market. These include two depository institutions each with more than a 20 percent share of market deposits, one depository institution with a more than 10 percent share of market deposits, and one depository institution with a more than five percent share of market deposits. The presence of these viable competitors suggests that Arvest would have limited ability unilaterally to offer less attractive terms to consumers, and these competitors would be able to exert competitive pressure on Arvest in the Harrison market. Moreover, recent entry and expansionary activity suggests that the market is attractive to potential competitors. Two depository institutions have established de novo branches in the Harrison market since 2016.

Mena market

Using initial screening data, Arvest is the 3rd largest competitor in the Mena market, controlling approximately \$27.7 million in deposits, which represent approximately 7.6 percent of market deposits.²⁷ Bear State is the second largest depository organization in the Mena market, controlling approximately \$66.4 million in deposits, which represent approximately 18.2 percent of market deposits. On consummation of the proposal, Arvest would become the second largest depository organization in the Harrison market, controlling approximately \$94.1 million in market deposits, which would represent approximately 25.8 percent of market deposits. The HHI in this market would increase by 277 points, from 4149 to 4426.²⁸

To mitigate the potentially adverse competitive effects of the proposal in the Mena market, Arvest has committed to divest one of Bear State Bank's two branches in the market to a competitively suitable out-of-market purchaser.²⁹ After accounting for the branch divestiture and following consummation of the proposal, Arvest would control approximately 8.2 percent of market deposits, and the HHI would decrease by 12 points, from 4149 to 4137. Accordingly, consummation of the proposal would be within the thresholds in the DOJ Bank Merger Guidelines.

²⁷ The Mena market is defined as Polk County, Arkansas.

²⁸ The high degree of concentration in the market is attributable to the presence of a large competitor, which controls approximately 60.6 percent of market deposits.

²⁹ As a condition of consummating the proposal, Arvest has committed that it will execute, before consummation of the proposal, an agreement to sell the branch to a purchaser or purchasers determined by the Board to be competitively suitable. Arvest also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, Arvest has committed that, if the proposed divestiture is not completed within the 180-day period, Arvest would transfer the unsold branch to an independent trustee, who would be instructed to sell the branch to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchasers must be deemed acceptable to the Board. See, e.g., *Bank America Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

Conclusion Regarding Competitive Effects

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

Based on all of the facts of record, including Arvest's commitment to divest a branch in the Mena market, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the eight banking markets in which Arvest Bank and Bear State Bank compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory 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 the future prospects of the institutions involved.³⁰ 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.

Arvest and Bear State are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a merger of Bear State with Arvest Bank's wholly owned acquisition subsidiary³¹ with a subsequent merger of Bear State Bank into Arvest Bank.³² The asset quality, earnings, and liquidity of both Arvest Bank and Bear State Bank are consistent with approval, and Arvest appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects 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 Arvest, Bear State, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Arvest; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; and the organiza-

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

³¹ As a result, Arvest Bank will become a bank holding company for a moment in time before Bear State is dissolved and Bear State Bank is merged with and into Arvest Bank.

³² As part of the proposed transaction, each share of Bear State's common stock would be converted into a right to receive cash. Arvest has the financial resources to effect the proposed transaction.

tions' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

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

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

Based on all of the facts of record, including Arvest'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 Arvest and Bear State 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.³³ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.³⁴ 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,³⁵ 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.³⁶

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

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

³⁴ 12 U.S.C. § 2901 *et seq.*

³⁵ 12 U.S.C. § 2901(b).

³⁶ 12 U.S.C. § 2903.

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 Arvest Bank and Bear State Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of St. Louis ("Reserve Bank") and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; and information provided by Arvest.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.³⁷ In this case, the Board considered the supervisory views of the Reserve Bank and the CFPB.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁸ 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"),³⁹ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distributions 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;⁴⁰ (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

³⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³⁸ 12 U.S.C. § 2906.

³⁹ 12 U.S.C. § 2801 *et seq.*

⁴⁰ 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).

benefit their assessment areas and a service test that evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.⁴¹ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amounts of their community development loans and qualified investments, the extent to which they provide community development services, and their responsiveness to community development lending, investment, and service needs.⁴²

CRA Performance of Arvest Bank

Arvest Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of September 21, 2015 (“Arvest Bank Evaluation”).⁴³ The bank received a “Low Satisfactory” rating for the Lending Test and “High Satisfactory” ratings for the Investment Test and the Service Test.⁴⁴

Examiners found that Arvest Bank originated a majority of its loans inside its AAs and that the bank’s overall lending activity reflected good responsiveness to AA credit needs. Examiners also noted that the bank’s small loans to businesses reflected adequate geographic penetration through the AAs. In addition, examiners found the bank’s distribution of product lines by income level of the borrower and the bank’s distribution of loans to businesses with different revenue sizes to be good.

Examiners determined that Arvest Bank’s level of qualified community development investments was adequate and responsive to community needs. Examiners found that the bank’s service delivery systems were accessible to geographies and individuals of different income levels within the bank’s AAs. Examiners also noted that in the states of Arkansas and Missouri, the bank’s branches were accessible and that, in the state of Oklahoma, the bank’s branches were reasonably accessible.

CRA Performance of Bear State Bank

Bear State Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of June 12, 2017 (“Bear State Bank Evaluation”).⁴⁵ The bank received a “Satisfactory” rating for the Lending Test and an “Outstanding” rating for the Community Development Test.⁴⁶ Greater weight was given

⁴¹ 12 CFR 228.21 *et seq.*

⁴² 12 CFR 228.26(c).

⁴³ The Arvest Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business loans originated from January 1, 2013, through December 31, 2014. The evaluation for community development loans, investments, and services was from April 15, 2013, through September 21, 2015.

⁴⁴ The Arvest Bank Evaluation included full-scope evaluations of the Fayetteville-Springdale-Rogers, Arkansas-Missouri Metropolitan Statistical Area (“MSA”); Fort Smith, Arkansas-Oklahoma MSA; Kansas City, Missouri-Kansas MSA, Little Rock-North Little Rock-Conway, Arkansas MSA; Joplin, Missouri MSA; Oklahoma City, Oklahoma MSA; Tulsa, Oklahoma MSA; the Arkansas Non-MSA AA; and the Oklahoma Non-MSA AA. Limited-scope evaluations were performed of the Hot Springs, Arkansas MSA; Springfield, Missouri MSA; Lawton, Oklahoma MSA; and the Missouri Non-MSA AA.

⁴⁵ The Bear State Bank Evaluation was conducted using the Intermediate Small Institution Examination Procedures. Examiners reviewed HMDA-reportable loans and commercial loans originated from January 1, 2015, through December 31, 2015. The evaluation period for community development lending, investments, and services was from June 3, 2013, to June 11, 2017.

⁴⁶ The Bear State Bank Evaluation included full-scope evaluations of the Fayetteville, Arkansas MSA; Jonesboro, Arkansas MSA; Springfield, Missouri MSA; the Southwest, Arkansas Non-MSA AA; the North Central, Arkansas Non-MSA AA; and the Oklahoma Non-MSA AA. Limited Scope evaluations were performed of the Hot Springs, Arkansas MSA; Little Rock, Arkansas MSA; Texarkana, Arkansas MSA; Barton County, Missouri MSA; and the Mississippi County, Arkansas Non-MSA AA.

to the bank's performance in Arkansas because of the higher percentage of bank deposits, branches, and loans in the state.

Examiners concluded that Bear State Bank was responding to the credit needs of its AAs. In particular, examiners found that the loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and AA credit needs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion throughout the AAs and that the distribution of loans reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners noted that the bank's community development performance, which included loans, investments, and services, demonstrated excellent responsiveness to community development needs throughout the bank's AAs.

Additional Supervisory Views

The Board has considered the results of the most recent consumer compliance examination of Arvest Bank conducted by Reserve Bank examiners, which included a review of the bank's compliance risk management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of the most recent consumer compliance examination of Bear State Bank conducted by Reserve Bank examiners, which included a review of the bank's consumer compliance function. In addition, the Board has taken into consideration the supervisory views of the CFPB regarding Arvest Bank.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Arvest represents that existing customers of Bear State Bank will benefit from Arvest Bank's expansive branch network with longer hours, broader digital services offerings, and a wider variety of products and customer service. In particular, Arvest represents that existing customers of Bear State will gain access to Arvest Bank's network of more than 250 branch locations and 350 ATMs. Further, existing customers of Bear State Bank will have access to increased offerings in the areas of personal account services, business account services, and advanced digital banking services.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal’s “risk to the stability of the United States banking or financial system.”⁴⁷

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.⁴⁸ 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.⁴⁹

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.⁵⁰

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.⁵¹ 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.

⁴⁷ Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-1602(2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

⁴⁸ Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴⁹ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁵⁰ 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.

⁵¹ Arvest Bank offers a variety of banking products and services, including retail and commercial banking; consumer, commercial, and mortgage lending; and consumer finance loans. Bear State Bank also offers a variety of banking products and services, including commercial, mortgage, and consumer loans. In each of the activities in which it engages, Arvest 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, and numerous competitors would remain for these products and services.

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

Arvest Bank has applied under section 9 of the FRA to establish branches at the current locations of Bear State Bank.⁵² The Board has assessed the factors it is required to consider when reviewing an application under that section.⁵³ Specifically, the Board has considered Arvest 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.⁵⁴ 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Arvest 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 applications. The conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 15th calendar day after the effective date of this order or later than three months thereafter, unless such period is extended for good cause by the Board or the Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective April 2, 2018.

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

Ann E. Misback
Secretary of the Board

⁵² See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. § 36(b)(2), (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, Arvest Bank's branches would be permissible under applicable state law. See Ark. Code Ann. § 23-48-702; Mo. Rev. Stat. § 362.107; 6 Okl. St. Ann. § 501.1.

⁵³ 12 U.S.C. § 322; 12 CFR 208.6.

⁵⁴ Upon consummation of the proposed transaction, Arvest Bank's investment in bank premises would remain within legal requirements, under 12 CFR 208.21.

Appendix A*Branches to Be Established by Arvest Bank***Arkansas**

1. 2009 Browns Lane, Jonesboro, Arkansas 72401
2. 5205 East Johnson Avenue, Jonesboro, Arkansas 72401
3. 3101 Southwest Drive, Jonesboro, Arkansas 72404
4. 110 West Main Street, Ashdown, Arkansas 71822
5. 307 North Walton Boulevard, Bentonville, Arkansas 72712
6. 2885 Prince Street, Conway, Arkansas 72034
7. 504 West Collin Raye Drive, De Queen, Arkansas 71832
8. 103 West Third Street, Dierks, Arkansas 71833
9. 3460 North College Avenue, Fayetteville, Arkansas 72703
10. 214 North First Street, Glenwood, Arkansas 71943
11. 324 South Highway 62 65 Bypass, Harrison, Arkansas 72601
12. 1401 Highway 62 65 N, Harrison, Arkansas 72601
13. 2223 Albert Pike Road, Hot Springs, Arkansas 71913
14. 135 Section Line Road, Hot Springs, Arkansas 71913
15. 3835 North Highway 7, Hot Springs Village, Arkansas 71909
16. 5315 Highland Drive, Little Rock, Arkansas 72223
17. 709 West Fleeman, Manila, Arkansas 72442
18. 600 Highway 71 South, Mena, Arkansas 71953
19. 600 Highway 71 North, Mena, Arkansas 71953
20. 301 East Drew Avenue, Monette, Arkansas 72447
21. 742 Highway 270 East, Mount Ida, Arkansas 71957
22. 221 South George Street, Mount Ida, Arkansas 71957
23. 1337 Highway 62 West, Mountain Home, Arkansas 72653
24. 3027 Highway 62 East, Mountain Home, Arkansas 72653
25. 668 Highway 62 East, Mountain Home, Arkansas 72653
26. 420 South Main Street, Nashville, Arkansas 71852
27. 2000 South Promenade Boulevard, Rogers, Arkansas 72758
28. 3300 West Sunset Avenue, Springdale, Arkansas 72762
29. 181 Highway 71 Bypass, Waldron, Arkansas 72958
30. 301 Highway 62 W, Yellville, Arkansas 72687

Missouri

1. 9863 State Highway 76, Branson West, Missouri 65737
2. 403 Main Street, Golden City, Missouri 64748
3. 150 South Town Boulevard, Hollister, Missouri 65672
4. 12661 State Highway 13, Kimberling City, Missouri 65686
5. 1105 Gulf Street, Lamar, Missouri 64759
6. 1101 Spur Drive, Marshfield, Missouri 65706
7. 716 West Mount Vernon Street, Nixa, Missouri 65714
8. 2835 East Battlefield Street, Springfield, Missouri 65804
9. 3340 East Cherry Street, Springfield, Missouri 65802
10. 600 South Glenstone Avenue, Springfield, Missouri 65802
11. 3550 South National Avenue, Springfield, Missouri 65807

Oklahoma

1. 409 South Park Drive, Broken Bow, Oklahoma 74728
2. 702 Southeast Washington Street, Idabel, Oklahoma 74745

Arvest/Bear State Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines