



## Legal Developments: Second Quarter, 2019

### Orders Issued Under Bank Holding Company Act

#### Order Issued Under Section 3 of the Bank Holding Company Act

Ameris Bancorp  
Moultrie, Georgia

*Order Approving the Acquisition of a Bank Holding Company*  
*FRB Order No. 2019-08 (June 10, 2019)*

Ameris Bancorp (“Ameris”), Moultrie, Georgia, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Fidelity Southern Corporation (“FSC”) and thereby indirectly acquire FSC’s state nonmember bank subsidiary, Fidelity Bank, both of Atlanta, Georgia. Fidelity Bank would be merged into Ameris’s state nonmember bank subsidiary, Ameris Bank, Moultrie, Georgia.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 3445 (February 12, 2019)).<sup>4</sup> 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 \$11.7 billion, is the 136<sup>th</sup> largest insured depository organization in the United States. Ameris controls approximately \$9.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>5</sup> Ameris controls Ameris Bank, which operates in Georgia, Florida, Alabama, and South Carolina. Ameris is the 8th largest insured depository organization in Georgia, controlling deposits of approximately \$5.3 billion, which represent 2.1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup> Ameris is the 30th largest insured depository organization in Florida, controlling deposits of approximately \$2.6 billion, which represent 0.5 percent of the total deposits of insured depository institutions in that state.

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> The merger of Fidelity Bank into Ameris Bank was approved by the Federal Deposit Insurance Corporation (“FDIC”) on May 6, 2019, pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

<sup>4</sup> 12 CFR 262.3(b).

<sup>5</sup> National asset data are as of March 31, 2019, and national deposit data are as of December 31, 2018, unless otherwise noted.

<sup>6</sup> State deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

FSC, with consolidated assets of approximately \$4.8 billion, is the 234th largest insured depository organization in the United States. FSC 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. FSC controls Fidelity Bank, which operates in Georgia and Florida. FSC is the 15th largest insured depository organization in Georgia, controlling deposits of approximately \$3.3 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. FSC is the 54th largest insured depository organization in Florida, controlling deposits of approximately \$0.8 billion, 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 104th largest insured depository organization in the United States, with consolidated assets of approximately \$16.5 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Ameris would control total consolidated deposits of approximately \$13.6 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 6th largest insured depository organization, controlling deposits of approximately \$8.6 billion, which represent 3.4 percent of the total deposits of insured depository institutions in the state. In Florida, Ameris would become the 26th largest insured depository organization, controlling deposits of approximately \$3.5 billion, which represent 0.6 percent of total deposits of insured depository institutions in the state.

### Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.<sup>7</sup> Section 3(d) also provides that the Board (1) may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years;<sup>8</sup> (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 (“CRA”)<sup>9</sup> and the applicant’s record of compliance with applicable state community reinvestment laws;<sup>10</sup> and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States<sup>11</sup> or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.<sup>12</sup>

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A). A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of each company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. *See* 12 U.S.C. § 1841(o)(4)(C).

<sup>8</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>9</sup> 12 U.S.C. § 2901 *et seq.*

<sup>10</sup> 12 U.S.C. § 1842(d)(3).

<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A).

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

For purposes of the BHC Act, the home state of Ameris is Georgia, and Fidelity Bank is located in Florida and Georgia. Ameris is well capitalized and well managed under applicable law. Fidelity Bank has been in existence for more than five years, and Ameris Bank has a “Satisfactory” rating under the CRA.

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. Florida does not impose a limit on the total amount of in-state deposits that a single banking organization may control. Georgia imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.<sup>13</sup> In Georgia, the combined organization would control less than 30 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.<sup>14</sup> The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.<sup>15</sup>

Ameris Bank and Fidelity Bank compete directly in the Atlanta Area, Georgia, banking market (“Atlanta market”); the Jacksonville Area, Florida, banking market (“Jacksonville market”); the Saint Augustine Area, Florida, banking market (“St. Augustine market”); and the Tallahassee Area, Florida, banking market (“Tallahassee market”).<sup>16</sup> The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in each market (“market deposits”) that Ameris would control;<sup>17</sup> 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”);<sup>18</sup> the number of competitors that would remain in each market; and other characteristics of each market.

<sup>13</sup> Ga. Code § 7-1-628.3(a).

<sup>14</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>15</sup> 12 U.S.C. § 1842(c)(1)(B).

<sup>16</sup> 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. 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 St. Augustine market is defined as St. Johns County, Florida (minus the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings). The Tallahassee market is defined as Gadsden, Jefferson, Leon, and Wakulla counties, Florida.

<sup>17</sup> Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

<sup>18</sup> 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 concen-

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Atlanta, Jacksonville, St. Augustine, and Tallahassee 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.<sup>19</sup> The Atlanta, St. Augustine, and Tallahassee markets would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Atlanta market would be small, and numerous competitors would remain in the market.<sup>20</sup> The change in the HHI in the St. Augustine market would be less than 200 points, and 12 competitors would remain in the St. Augustine market.<sup>21</sup> The HHI in the Tallahassee market would remain unchanged, and 17 competitors would remain in the market.<sup>22</sup>

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 determines that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Atlanta, Jacksonville, St. Augustine, or Tallahassee markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

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trated 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 <https://www.justice.gov/opa/pr/2010/August/10-at-938.html>.

<sup>19</sup> Ameris operates the 6th largest depository institution in the Jacksonville market, controlling approximately \$1.1 billion in deposits, which represent 2.2 percent of market deposits. FSC operates the 14th largest depository institution in the same market, controlling deposits of approximately \$318.7 million, which represent approximately 0.6 percent of market deposits. On consummation of the proposed transaction, Ameris would remain the 6th largest depository organization in the market, controlling deposits of approximately \$1.4 billion, which represent approximately 2.8 percent of market deposits. The HHI for the Jacksonville market would increase by 3 points to 2709, and 33 competitors would remain in the market.

<sup>20</sup> Ameris operates the 18th largest depository institution in the Atlanta market, controlling approximately \$1.3 billion in deposits, which represent 0.8 percent of market deposits. FSC operates the 10th largest depository institution in the same market, controlling deposits of approximately \$3.2 billion, which represent approximately 1.9 percent of market deposits. On consummation of the proposed transaction, Ameris would become the 7th largest depository organization in the market, controlling deposits of approximately \$4.5 billion, which represent approximately 2.7 percent of market deposits. The HHI for the Atlanta market would increase by 3 points to 1551, and 79 competitors would remain in the market.

<sup>21</sup> Ameris operates the 4th largest depository institution in the St. Augustine market, controlling approximately \$288.2 million in deposits, which represent 14.0 percent of market deposits. FSC operates the 6th largest depository institution in the same market, controlling deposits of approximately \$133.7 million, which represent 6.5 percent of market deposits. On consummation of the proposal, Ameris would become the largest depository institution in the market, controlling deposits of approximately \$421.9 million, which represent 20.4 percent of market deposits. The HHI for the St. Augustine market would increase by 181 points to 1455.

<sup>22</sup> Ameris operates the 13th largest depository institution in the Tallahassee market, controlling approximately \$125.0 million in deposits, which represent 1.6 percent of market deposits. FSC operates the 17th largest depository institution in the same market, controlling approximately \$11.6 million in deposits, which represent 0.2 percent of market deposits. On consummation of the proposal, Ameris would remain the 13th largest depository institution, controlling \$136.6 million in deposits, which represent 1.7 percent of market deposits. The HHI for the Tallahassee market would remain 1036.

### **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.<sup>23</sup> 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, FSC, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured primarily as a stock exchange, with a subsequent merger of the subsidiary depository institutions.<sup>24</sup> The asset quality, earnings, and liquidity of both Ameris Bank and Fidelity 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, FSC, 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.

Ameris, FSC, 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

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<sup>23</sup> 12 U.S.C. § 1842(c)(2), (5), and (6).

<sup>24</sup> As part of the proposed transaction, each share of FSC's common stock would be converted into the right to receive 0.8 shares of Ameris common stock together with cash in lieu of any fractional shares. Ameris has the financial resources to effect the proposed transaction.

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 plans to integrate FSC's existing management and personnel in a manner that augments Ameris's management.<sup>25</sup>

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 determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Ameris and FSC 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.<sup>26</sup> In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities. The Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,<sup>27</sup> 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.<sup>28</sup>

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Ameris Bank and Fidelity 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.

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<sup>25</sup> On consummation, the number of directors on Ameris's board of directors would increase by five, and five individuals currently serving on the board of directors of FSC would join the board of Ameris. Corresponding changes would be made to the board of directors of Ameris Bank. In addition, the current chairman and chief executive officer ("CEO") of FSC would become the executive chairman of Ameris and Ameris Bank, and the current president of FSC and CEO of Fidelity Bank would become the president of Ameris and the CEO of Ameris Bank.

<sup>26</sup> 12 U.S.C. § 1842(c)(2).

<sup>27</sup> 12 U.S.C. § 2901(b).

<sup>28</sup> 12 U.S.C. § 2903.

### *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 in the rate of denials for home mortgage applications from, African Americans and Hispanics as compared to whites in Atlanta, Georgia, based on 2017 data that Ameris reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”).<sup>29</sup> The commenter also alleged, based on 2016 and 2017 HMDA data, disparities in the number of home improvement loans Ameris Bank made to African Americans and Latinos as compared to whites in Jacksonville, Florida.<sup>30</sup>

### *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.

Fidelity Bank offers a variety of consumer and business loan and deposit products, as well as related wealth management services, through its branches in Georgia and Florida. Fidelity Bank’s products and services include real estate loans, auto loans, home equity lines of credit, business loans, and checking and savings 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.

With respect to the commenter’s allegations about Ameris Bank’s disparate home mortgage lending practices in Atlanta, Ameris argues that its distribution of mortgage loans among African Americans and Latinos in Atlanta is generally comparable to the population demographics. Ameris also asserts that it is among the top 10 percent of lenders originating mortgages to African Americans in Atlanta. In addition, with respect to the commenter’s allegations about Ameris Bank’s disparate home improvement lending practices in Jacksonville, Ameris asserts that Ameris Bank does not actively market home improvement loans and receives only a small number of applications in Jacksonville.

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<sup>29</sup> 12 U.S.C. § 2801 *et seq.* This commenter made similar allegations based on 2016 HMDA data, and those allegations previously were considered by the Board in connection with its May 9, 2018, approval of Ameris’s application to acquire Atlantic Coast Financial Corporation and its June 13, 2018, approval of Ameris’s application to acquire Hamilton State Bancshares, Inc. *See Ameris Bancorp*, FRB Order No. 2018-12 at 11 (May 9, 2018); *Ameris Bancorp*, FRB Order No. 2018-14 at 8 (June 13, 2018).

<sup>30</sup> The commenter also alleged that Ameris has engaged in predatory collection of overdraft fees and expressed concern over Ameris’s allegedly conflicting statements regarding the intended location of its headquarters. The allegation regarding Ameris’s overdraft fee collection practices also previously was considered by the Board in its May 9, 2018, approval of Ameris’s application to acquire Atlantic Coast Financial Corporation and its June 13, 2018, approval of Ameris’s application to acquire Hamilton State Bancshares, Inc. *See Ameris Bancorp*, FRB Order No. 2018-12 at 11 (May 9, 2018); *Ameris Bancorp*, FRB Order No. 2018-14 at 8 (June 13, 2018). The statements about the location of Ameris’s headquarters are outside of the statutory factors that the Board is authorized to consider when reviewing an application or notice under section 3 of the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

*Records of Performance under the CRA*

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

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.<sup>32</sup> 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 ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Ameris Bank and Fidelity 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 the 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;<sup>33</sup> (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.<sup>34</sup> The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.<sup>35</sup>

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

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<sup>31</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

<sup>32</sup> 12 U.S.C. § 2906.

<sup>33</sup> 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).

<sup>34</sup> See 12 CFR 228.22(b).

<sup>35</sup> See 12 CFR 228.21 *et seq.*



information critical to an institution's credit decisions is not available from HMDA data.<sup>36</sup> Consequently, the Board evaluates such data disparities 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").<sup>37</sup> The bank received "High Satisfactory" ratings for the Lending Test and the Service Test and a "Low Satisfactory" rating for the Investment Test.<sup>38</sup>

Examiners found that the bank's lending levels reflected good responsiveness to the needs of the bank's AAs 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 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 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 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 the delivery systems of Ameris Bank 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 the bank's 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

<sup>36</sup> 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.

<sup>37</sup> 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; 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.

<sup>38</sup> The Ameris Bank Evaluation reviewed the bank's activities in each of its 22 AAs throughout Georgia, Florida, Alabama, and South Carolina.

reported a significant volume of loans to first-time homebuyers in 2018. Ameris also represents that Ameris Bank participates in federal loan programs tailored to assist LMI individuals and first-time homebuyers.

#### *CRA Performance of Fidelity Bank*

Fidelity Bank received an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of May 27, 2015 (“Fidelity Bank Evaluation”).<sup>39</sup> The bank received “Low Satisfactory” ratings for the Lending Test and Investment Test and a “High Satisfactory” rating for the Service Test.<sup>40</sup>

Examiners concluded that Fidelity Bank’s lending performance reflected adequate responsiveness to the credit needs in the bank’s AAs but that a small percentage of the loans were originated in the bank’s AAs. Examiners found that the geographic distribution of the bank’s home mortgage and consumer loans reflected a poor dispersion throughout the bank’s AAs but found that the geographic distribution of the bank’s small business loans reflected an adequate dispersion throughout the bank’s AAs. Examiners determined that the bank’s borrower profile revealed poor penetration among home mortgage customers of different income levels and businesses of different sizes but adequate penetration of consumer loans among certain borrowers of different income levels. Examiners noted that the bank had an adequate level of qualified community development investments and that the bank showed 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 and a fair lending review of the bank’s residential lending.

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

#### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Ameris represents that, following consummation of the proposal, existing customers of Fidelity Bank would benefit from the technical expertise and resources that Ameris Bank has developed. Ameris further represents that Ameris

<sup>39</sup> The Fidelity Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage, small business, and consumer loans from January 1, 2013, through December 31, 2014.

<sup>40</sup> Examiners conducted full-scope reviews of the bank’s AAs in Georgia and Florida and the Atlanta Metropolitan Statistical Area (“MSA”) AA, as well as a limited-scope review in the Jacksonville MSA AA. Due to Fidelity Bank’s limited activity and time operating in the bank’s four other AAs, the Fidelity Bank Evaluation did not include evaluations of the Georgia Non-MSA AA, Gainesville, Florida MSA AA, Deltona-Daytona Beach-Ormond Beach, Florida MSA AA, and Orlando-Kissimmee-Sanford, Florida MSA AA.

Bank would provide a substantially similar suite of retail and commercial banking services and products as those provided by Fidelity Bank. In addition, Ameris asserts that Ameris Bank would provide Fidelity Bank customers access to products and services through a branch network and loan production offices spanning a much larger footprint, as well as enhanced online and mobile banking platforms and access to treasury services. Ameris contends that Ameris Bank would strive to maintain a strong working relationship with city and county governments in the former Fidelity 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 indicates 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 fair lending and other 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 determines that the convenience and needs factor is consistent with approval.

#### **Financial Stability**

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup>

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets,

<sup>41</sup> 12 U.S.C. § 1842(c)(7).

<sup>42</sup> Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

<sup>43</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

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.<sup>44</sup>

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in total assets and a pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.<sup>45</sup> 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.<sup>46</sup> 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

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<sup>44</sup> 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.

<sup>45</sup> Ameris and FSC 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.

<sup>46</sup> The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or 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 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 a public hearing on the proposal is denied.

In addition, the commenter requested an extension of the comment period for the proposal. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board determines not to extend the comment period.

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 Atlanta, acting under delegated authority.

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

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

Michele Taylor Fennell  
*Assistant Secretary of the Board*

## Order Issued Under Section 4 of the Bank Holding Company Act, the Bank Merger Act, and the Federal Reserve Act

Texas Independent Bancshares, Inc.  
Texas City, Texas

*Order Approving the Acquisition of a Savings and Loan Holding Company, the Acquisition of a Federal Savings Bank, the Merger of Depository Institutions, and the Establishment of Branches*  
*FRB Order No. 2019-10 (June 27, 2019)*

Texas Independent Bancshares, Inc. (“TIB”), Texas City, Texas, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act<sup>2</sup> to acquire Preferred Bancshares, Inc. (“Preferred”), Houston, Texas, a savings and loan holding company, and thereby indirectly acquire Preferred Bank, Houston, Texas, a federal savings bank. Following the proposed acquisition, Preferred would be merged into TIB.<sup>3</sup>

In addition, TIB’s subsidiary state member bank, Texas First Bank, Texas City, Texas, has requested the Board’s approval to merge with Preferred Bank, pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”),<sup>4</sup> with Texas First Bank as the surviving entity. Texas First Bank also has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>5</sup> to establish and operate branches at the main office and branches of Preferred Bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (84 *Federal Register* 11789 (March 28, 2019)) and has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.<sup>6</sup> The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in 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.

TIB, with consolidated assets of approximately \$1.1 billion, is the 703rd largest insured depository organization in the United States. TIB controls approximately \$966.9 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>7</sup> TIB controls Texas First Bank, which operates solely in Texas. Texas First Bank is the 73rd largest insured depository organization in Texas, controlling deposits of approximately \$948.1 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>8</sup>

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. §§ 1843(c)(8) and (j).

<sup>3</sup> TIB has formed a merger subsidiary that would merge with Preferred, with Preferred as the surviving entity. Preferred would then merge into TIB.

<sup>4</sup> 12 U.S.C. § 1828(c).

<sup>5</sup> 12 U.S.C. § 321; *see* 12 CFR 208.6. These locations are listed in the Appendix.

<sup>6</sup> 12 CFR 262.3(b).

<sup>7</sup> Consolidated asset data are as of December 31, 2018. Nationwide asset ranking and deposit data are as of December 31, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

<sup>8</sup> State asset ranking and deposit data are as of June 30, 2018, unless otherwise noted.

Preferred, with consolidated assets of approximately \$282.3 million, is the 2,359th largest insured depository organization in the United States, controlling approximately \$237.9 million in deposits. Preferred controls Preferred Bank, which operates solely in Texas. Preferred Bank is the 205th largest insured depository institution in Texas, controlling deposits of approximately \$251.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, TIB would become the 577th largest insured depository organization in the United States, with consolidated assets of approximately \$1.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. TIB would control total deposits of approximately \$1.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, TIB would become the 60th largest depository organization, controlling deposits of approximately \$1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions.

### **Factors Governing Board Review of the Transaction**

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>9</sup> The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.<sup>10</sup> TIB has committed that all of the activities of Preferred and its subsidiaries would conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Preferred Bank “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”<sup>11</sup> As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.<sup>12</sup> The Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).<sup>13</sup>

In addition, in every case under the Bank Merger Act, the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the competitive effects of the proposal in the relevant markets, the convenience and needs of the communities to be served, the institutions’ records of compliance with anti-money-laundering laws, and the risk of the proposal to the stability of the United States banking or financial system.<sup>14</sup>

<sup>9</sup> 12 CFR 225.28(b)(4)(ii).

<sup>10</sup> 12 CFR 225.28(b)(4)(ii).

<sup>11</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>12</sup> See 12 CFR 225.26; see, e.g., *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

<sup>13</sup> 12 U.S.C. § 2901 *et seq.*

<sup>14</sup> The proposal does not raise interstate issues under section 4(c)(8) of the BHC Act because Texas is the home state of TIB and is where Preferred Bank’s home office is located. See 12 U.S.C. § 1843(i)(8).

## Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.<sup>15</sup> The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.<sup>16</sup> In addition, as part of the Board's consideration of the factors under section 4(j)(2) of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of record.<sup>17</sup>

TIB and Preferred compete directly in the Houston, Texas, banking market.<sup>18</sup> The Board has considered the competitive effects of the proposal in this banking market in light of the facts of record. 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 TIB would control;<sup>19</sup> 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");<sup>20</sup> 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 Houston, Texas, banking market. On consummation of the proposal, the Houston, Texas, banking market would remain highly concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The HHI in this market would decrease slightly, and numerous competitors would remain in the market.<sup>21</sup>

<sup>15</sup> 12 U.S.C. § 1828(c)(5)(A).

<sup>16</sup> 12 U.S.C. § 1828(c)(5)(B).

<sup>17</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>18</sup> The Houston, Texas, banking market is defined as Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties, all in Texas.

<sup>19</sup> Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent.

<sup>20</sup> 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), <https://www.justice.gov/opa/pr/2010/August/10-at-938.html>.

<sup>21</sup> TIB operates the 24th largest depository institution in the Houston, Texas, banking market, controlling approximately \$904.6 million in deposits, which represent less than 1 percent of market deposits. For purposes of the HHI analysis, Preferred operates the 62nd largest depository institution in the same market and is treated as controlling approximately \$125.6 million in deposits (*i.e.*, actual deposits weighted at 50 percent), which represent less than 1 percent of market deposits. On consummation of the proposed transaction, TIB would become the 23rd largest depository institution in the Houston, Texas, banking market, controlling deposits of approximately \$1.2 billion, which represent less than 1 percent of market deposits. The HHI for the Houston, Texas, banking market would decrease by 2 points to 2148, and 91 competitors would remain in the market. For purposes of the competitive analysis, once a savings association is acquired by a bank holding company, the Board weights the deposits controlled by the savings association at 100 percent, similar to a commercial bank.



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 have a significantly adverse effect on competition in any relevant banking market, including the Houston, Texas, 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 Houston, Texas, banking 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 proposals under the Bank Merger Act and section 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.<sup>22</sup> 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.

TIB and Preferred are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.<sup>23</sup> The asset quality, earnings, and liquidity of TIB and Preferred are consistent with approval, and TIB appears to have adequate resources to absorb the related 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 TIB, Preferred, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by TIB, the Board's supervisory experiences with TIB and Preferred and those of other relevant bank supervisory agencies with the organizations,

<sup>22</sup> 12 U.S.C. §§ 1843(j)(4); 1828(c)(5) and (11).

<sup>23</sup> To effect the holding company merger, a wholly owned subsidiary of TIB formed to facilitate the transaction would merge with Preferred, with Preferred as the surviving entity ("First-Step Merger"). At the effective time of the First-Step Merger, the shareholders of Preferred would receive a cash payment for their stock. Immediately thereafter, Preferred would merge with TIB, with TIB as the surviving entity. Preferred Bank would then merge with and into Texas First Bank, with Texas First Bank as the surviving entity. TIB has the financial resources to effect the proposed transaction.

and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by the commenter.

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

The Board also has considered TIB's plans for implementing the proposal. TIB 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. TIB would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, TIB's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and TIB plans to integrate Preferred's existing management and personnel in a manner that augments TIB's management.<sup>24</sup>

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

#### **Convenience and Needs Considerations**

In acting on a proposal under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served.<sup>25</sup> In addition, as part of weighing the possible adverse effects of a transaction against its public benefits as required by section 4(j)(2) of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.<sup>26</sup> In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>27</sup> 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.<sup>28</sup>

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 charac-

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<sup>24</sup> On consummation, two individuals currently serving as senior management officials of Preferred and Preferred Bank would become senior management officials of TIB and Texas First Bank.

<sup>25</sup> 12 U.S.C. § 1828(c)(5)(B).

<sup>26</sup> 12 U.S.C. § 1843(j)(2).

<sup>27</sup> 12 U.S.C. § 2901(b).

<sup>28</sup> 12 U.S.C. § 2903.

teristics. 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 Texas First Bank and Preferred Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Dallas ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC"); confidential supervisory information; information provided by TIB; and the public comment received on the proposal.

#### *Public Comment on the Proposal*

One commenter objected to the proposal, alleging that Texas First Bank discriminates against African Americans and "redlines" African American neighborhoods in Houston, Texas.<sup>29</sup> Specifically, the commenter alleged that Texas First Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its branches in predominantly white neighborhoods and its banking services to white individuals and white-owned businesses in Houston. The commenter also alleged that Texas First Bank disfavors certain African American neighborhoods in Houston with respect to its lending, marketing, and community development activities and in other respects.

#### *Businesses of the Involved Institutions and Response to Comments*

Texas First Bank is a regional banking franchise headquartered in Texas City, Texas. It is a full-service bank that offers a wide range of financial services, with a focus on loans and deposit services to small- and middle-market commercial businesses. Texas First Bank's lending portfolio primarily consists of small business, commercial real estate, commercial and industrial, and one-to-four family residential real estate loans, with a limited residential mortgage and consumer loan portfolio. Preferred Bank, a federal savings bank with five branches in Texas, offers a full range of loans and deposit services to its customers, with a focus on residential real estate lending.

TIB disputes the commenter's allegations and asserts that approval of the proposed transaction is warranted based on the banks' CRA performance evaluations and Texas First Bank's lending activities and responsiveness to community development needs in Houston. TIB asserts that Texas First Bank has consistently met the requirements of the CRA and is committed to continuing to meet the goals of the CRA after consummation of the transaction. TIB notes that as part of Texas First Bank's CRA performance evaluation, examiners found that the bank's efforts to meet the credit needs of LMI communities were satisfactory.

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<sup>29</sup> 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>.

The commenter also criticized Texas First Bank's activities and operations in Dallas, Texas, an area in which the bank does not have operations.

*Records of Performance under the CRA*

In evaluating the CRA performance of the involved institutions, the Board generally considers the institutions' most recent CRA evaluation, as well as other information and supervisory views from the appropriate federal supervisors, which in this case are the Reserve Bank and the OCC.<sup>30</sup> In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.<sup>31</sup> 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 ("Lending Test") and a community development test ("Community Development Test") to evaluate the performance of an intermediate small bank, such as Texas First Bank, 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"),<sup>32</sup> 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 such loans, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including the number and amounts of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;<sup>33</sup> (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.<sup>34</sup> The Community Development Test evaluates the number and amounts of an institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness to community development lending, investment, and service needs.<sup>35</sup> Small banks, such as Preferred Bank, are subject to the Lending Test only.

<sup>30</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

<sup>31</sup> 12 U.S.C. § 2906.

<sup>32</sup> 12 U.S.C. § 2801 *et seq.*

<sup>33</sup> 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).

<sup>34</sup> See 12 CFR 228.22(b).

<sup>35</sup> 12 CFR 228.26(c).

### *CRA Performance of Texas First Bank*

The Reserve Bank assigned Texas First Bank an overall rating of “Satisfactory” at its most recent CRA performance evaluation, as of July 11, 2016 (“Texas First Bank Evaluation”).<sup>36</sup> The bank received a “Satisfactory” rating for the Lending Test and an “Outstanding” rating for the Community Development Test.<sup>37</sup>

Examiners found that Texas First Bank made a substantial majority of its home mortgage loans and small business loans in its two AAs. Examiners determined that the bank had a reasonable penetration of loans among borrowers of different income levels and that the distribution of HMDA loans to LMI borrowers was reasonable, given the high levels of competition, housing costs, and income in the AAs. Examiners found that the bank had a reasonable penetration of lending to businesses of different sizes, especially given the local competition. Examiners further found that the geographic distribution of the bank’s loans reflected reasonable dispersion throughout the bank’s AAs. Examiners noted that the bank’s loan-to-deposit ratio was reasonable given the bank’s size, financial condition, and the credit needs of its AA. Examiners concluded that the bank did a reasonable job of meeting the small business needs of its AAs.

Examiners found that that Texas First Bank’s performance under the Community Development Test demonstrated excellent responsiveness to the community development needs of its AAs, considering the capacity, loan demand, and available lending opportunities in those areas.

In the Texas City AA, an area of concern to the commenter, examiners found that the geographic distribution of Texas First Bank’s loans reflected a reasonable distribution throughout the AA. Examiners determined that the distribution of Texas First Bank’s loans among LMI geographies reflected reasonable dispersion throughout the Texas City AA. Overall, examiners found that the distribution of Texas First Bank’s borrowers within the Texas City AA reflected reasonable penetration among individuals of different income levels and businesses of different sizes.

Examiners determined that Texas First Bank demonstrated excellent responsiveness to the community development needs of the Texas City AA through qualified investments and social services targeted to LMI individuals in the community. Examiners noted that the bank provided community development services through its branches, 40 percent of which were located in LMI areas.

### *Texas First Bank’s Activities Since the Texas First Bank Evaluation*

TIB represents that Texas First Bank continues to build upon its strong CRA performance. TIB represents that Texas First Bank has originated a majority of its home mortgage and small business loans within its AAs. TIB notes that the bank increased its loan-to-deposit ratio to almost 65 percent as of March 31, 2019, with a quarterly average of around

<sup>36</sup> The Texas First Bank Evaluation was conducted using the CRA Intermediate Small Bank Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and commercial loans, giving greater weight to the commercial lending portfolio because it represented the largest volume of the bank’s lending efforts. Examiners reviewed HMDA lending data reported by the institution for the period January 1, 2013, through December 31, 2015. Examiners also reviewed a sample of commercial loans originated by Texas First Bank between July 1, 2015, and December 31, 2015. The evaluation period for community development was the period since Texas First Bank’s previous CRA evaluation, dated February 4, 2013.

<sup>37</sup> Examiners reviewed Texas First Bank’s two AAs: the Texas City AA, which consisted of Brazoria, Chambers, Galveston, Harris, and Liberty counties; and five of nine counties comprising the Houston-The Woodlands-Sugar Land, Texas Metropolitan Statistical Area (MSA); and the Beaumont County AA, which consisted of Harden and Jefferson counties and two of four counties comprising the Beaumont-Port Arthur, Texas MSA.

59 percent since the previous CRA evaluation. Moreover, TIB asserts that Texas First Bank has provided community development investments and community development loans within its AAs, as well as community development loans throughout Texas.

#### *CRA Performance of Preferred Bank*

The OCC assigned Preferred Bank an overall rating of “Satisfactory” at its most recent CRA performance evaluation, as of March 10, 2015 (“Preferred Bank Evaluation”).<sup>38</sup>

Examiners found that Preferred Bank maintained a reasonable loan-to-deposit ratio compared with the ratios of similarly situated banks. Examiners also found that a substantial majority of Preferred Bank’s loans were made within the bank’s single AA. Examiners considered the distribution of loans to reflect reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners determined that the overall geographic distribution of Preferred Bank’s loans reflected outstanding dispersion for business loans in the bank’s AA but poor dispersion in LMI census tracts for residential mortgage loans. Examiners noted that Preferred Bank offered lines of credit for construction projects and working capital in response to the community’s credit needs.

#### *Additional Supervisory Views*

The Board has considered the results of the most recent consumer compliance examination of Texas First 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 Preferred 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 Texas First Bank and Preferred Bank, into account in evaluating the proposed transaction, including in considering whether TIB has the experience and resources to ensure that Texas First 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. TIB represents that, following the proposed transaction, the combined organization would continue to offer a range of deposit and credit products and services that benefit the communities in which Texas First Bank and Preferred Bank each presently conduct business, including credit products and services that help fulfill the needs of LMI demographics. For example, TIB represents that consumer loans presently offered to Texas First Bank customers would be expanded to the customer base of Preferred Bank and that the single-family loan portfolio of Preferred Bank would be expanded to include the customer base of Texas First Bank.

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<sup>38</sup> The Preferred Bank Evaluation was conducted using the CRA Small Bank Examination Procedures. Examiners reviewed lending data for the period January 1, 2013, through December 31, 2014, giving more weight to business loans, which comprised the largest volume of the bank’s loans. Examiners reviewed Preferred Bank’s sole AA, which consisted of Harris, Montgomery, and Fort Bend counties in the Houston-The Woodlands-Sugar Land, Texas MSA.

### *Conclusion on Convenience and Needs Considerations*

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

### **Financial Stability**

The Bank Merger Act and section 4 of the BHC Act require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominantly engaged in a variety of consumer and commercial banking activities.<sup>43</sup> The pro forma organization would have minimal cross-

<sup>39</sup> 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5).

<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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

<sup>42</sup> See *Peoples United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

<sup>43</sup> TIB and Preferred primarily offer a range of retail and commercial banking products and services. TIB has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

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.

### **Weighing of Public Benefits of the Proposal**

As noted above, in connection with a proposal under section 4 of the BHC Act, the Board is required to “consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system.”<sup>44</sup> As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Preferred Bank. In addition, the acquisition would ensure continuity and strength of service to those customers.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order, is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, and for the reasons discussed above, the Board concludes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience to the public, financial stability, and other factors weighs in favor of approval of this proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.<sup>45</sup>

### **Establishment of Branches**

Texas First Bank has applied under section 9 of the FRA to establish branches at the current locations of Preferred Bank.<sup>46</sup> The Board has assessed the factors it is required to consider when reviewing an application under that section, including Texas First 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.<sup>47</sup> For the reasons discussed in this order, the Board determines that those factors are consistent with approval.

<sup>44</sup> 12 U.S.C. § 1843(j)(2).

<sup>45</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>46</sup> 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. See 12 U.S.C. § 36(d).

<sup>47</sup> 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Texas First Bank’s investments in bank premises would remain within the legal requirements of 12 CFR 208.21.



**Conclusion**

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

The acquisition of Preferred and Preferred Bank may occur immediately. The merger of Preferred Bank and Texas First Bank may not be consummated before the 15th calendar day after the effective date of this order, and the acquisition and merger may not be consummated 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 June 27, 2019.

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

Michele Taylor Fennell  
*Assistant Secretary of the Board*

**Appendix****Branches to Be Established by Texas First Bank**

1. 11757 Katy Freeway, Suite 100, Houston, Texas 77079
2. 16522 Stuebner Airline Road, Spring, Texas 77379
3. 4648 Beechnut Street, Houston, Texas 77096
4. 3000 Research Forest Drive, Suite 190, The Woodlands, Texas 77381
5. 1192 W. Dallas, Suite A, Conroe, Texas 77301

## Order Issued Under Federal Reserve Act

Frost Bank  
San Antonio, Texas

*Order Approving the Establishment of Branches*  
*FRB Order No. 2019-09 (June 20, 2019)*

Frost Bank, a state member bank subsidiary of Cullen/Frost Bankers, Incorporated, both of San Antonio, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")<sup>1</sup> and the Board's Regulation H<sup>2</sup> to establish ten branches in Texas, as set forth in Appendix A.<sup>3</sup>

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

Cullen/Frost Bankers, Incorporated, with total assets of \$32.4 billion, is the 64th largest depository organization in the United States, controlling approximately \$27.2 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>5</sup> Frost Bank operates through 143 branches located in Texas, and the bank's main office is in San Antonio, Texas.<sup>6</sup>

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

<sup>1</sup> 12 U.S.C. § 321.

<sup>2</sup> 12 CFR part 208.

<sup>3</sup> Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. *See* 12 U.S.C. § 321. A national bank may establish and operate a de novo branch within a state in which the bank is situated, if such establishment and operation is authorized under applicable state law. *See* 12 U.S.C. § 36(c)(2). Frost Bank only has branches in Texas and is permitted to establish additional branches under the laws of Texas. *See* Tex. Fin. Code Ann. § 203.006.

<sup>4</sup> 12 CFR 262.3(b).

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

<sup>6</sup> In Texas, Frost Bank is the 6th largest depository organization, controlling approximately \$26.1 billion in deposits, which represent approximately 3.1 percent of the total amount of deposits of insured depository institutions in that state.

<sup>7</sup> 12 CFR 208.6(b).

<sup>8</sup> 12 U.S.C. § 2901 *et seq.*

<sup>9</sup> 12 CFR 208.21(a).

### **Financial, Managerial, and Other Supervisory Considerations**

In considering the financial history and condition, earnings prospects, and capital adequacy of Frost Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Frost Bank, and the comment received on the proposal. Frost Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Frost Bank are consistent with approval, and Frost Bank appears to have adequate resources to absorb the costs of the proposal. In addition, future earnings prospects are considered consistent with approval. The Board also has reviewed Frost Bank's proposed investment in the branches and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.<sup>10</sup>

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

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

### **Convenience and Needs Considerations**

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.<sup>11</sup> In its evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>12</sup> 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 branching proposals.<sup>13</sup>

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

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<sup>10</sup> 12 CFR 208.21(a).

<sup>11</sup> 12 CFR 208.6(b)(3).

<sup>12</sup> 12 U.S.C. § 2901(b).

<sup>13</sup> 12 U.S.C. § 2903.

institution's business model, marketing and outreach plans, and 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 Frost Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Frost Bank, and the public comment received on the proposal.

#### *Public Comment on the Proposal*

One commenter objected to the proposal, alleging that Frost Bank discriminates against African Americans and “redlines” African American neighborhoods in Houston and Dallas, both in Texas.<sup>14</sup> Specifically, the commenter alleged that Frost Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its branches in predominantly white neighborhoods and its banking services to white individuals and white-owned businesses in Houston and Dallas. The commenter also alleges that Frost Bank disfavors certain African American neighborhoods in Houston and Dallas with respect to its branching activities and in other respects.

#### *Business of the Applicant and Response to Comment*

Frost Bank offers a broad range of retail and commercial banking products to consumers and businesses through its network of branches. The products and services include commercial, residential, agricultural, and consumer loans; personal checking and savings accounts; business checking and savings accounts; business credit cards and correspondent banking; and wealth management services.

In response to the commenter's allegations, Frost Bank asserts that it is committed to providing consistent, long-term support to the communities in which Frost Bank operates through the establishment of a branch distribution network that is designed to serve the financial needs of all segments of each community. Frost Bank represents that, prior to the decision to open, relocate, or close a branch, the bank considers the impact to the local community and the overall regional distribution network in order to ensure maintenance or enhancement of access to majority-minority neighborhoods. Frost Bank further asserts that it offers all of its products and services without regard to any prohibited basis and is committed to fair and equal treatment of all of its existing and prospective customers. Frost Bank represents that it has safeguards in place to prevent illegal discrimination, including the establishment of a comprehensive fair lending program to conduct fair lending risk assessments and fair lending monitoring. Frost Bank further represents that it engages in a comprehensive marketing and outreach program to serve the needs of historically underserved areas. Additionally, Frost Bank asserts that it has made a number of community development loans in majority-minority census tracts; in zip codes identified in the comment as being underserved “Black neighborhoods” in Dallas County; and in Harris County in Houston, Texas.

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

### *Record of Performance under the CRA*

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

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.<sup>16</sup> 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 ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of a large insured depository institution, such as Frost Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),<sup>17</sup> 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;<sup>18</sup> (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.<sup>19</sup> The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.<sup>20</sup>

<sup>15</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

<sup>16</sup> 12 U.S.C. § 2906.

<sup>17</sup> 12 U.S.C. § 2801 *et seq.*

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

<sup>19</sup> See 12 CFR 228.22(b).

<sup>20</sup> See 12 CFR 228.21 *et seq.*

*CRA Performance of Frost Bank*

Frost Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Reserve Bank, as of August 13, 2018 (“Frost Bank Evaluation”).<sup>21</sup> The bank received an “Outstanding” rating for the Investment Test, and a “High Satisfactory” rating for each of the Lending Test and the Service Test.<sup>22</sup>

Examiners found that Frost Bank’s overall lending activity reflected good responsiveness to the credit needs in all of the bank’s AAs and that the overall geographic distribution of the bank’s loans reflected excellent penetration throughout the AAs. In addition, examiners found that the distribution of the bank’s home mortgage borrowers reflected adequate penetration among borrowers of different income levels and that the bank’s distribution of small business lending reflected adequate penetration among businesses of different revenue sizes. Examiners further found that the bank originated a substantial majority of its loans inside its AAs. Examiners noted that the bank is a leader in making community development loans; such loans were made for a variety of purposes, including for multi-family housing; and the majority of community development loans were for affordable housing and community services to LMI individuals or LMI areas.

In both the Houston and Dallas AAs, the two areas of concern for the commenter, examiners determined that Frost Bank’s lending levels reflected good responsiveness to the AAs’ credit needs. In addition, examiners found that the geographic distribution of the bank’s loans reflected excellent penetration in the Houston AA and reflected good penetration in the Dallas AA. Examiners determined that the bank’s distribution of loans to borrowers of different income levels and to businesses of different revenue sizes reflected good penetration in the Houston AA and reflected adequate penetration in the Dallas AA. Examiners determined that Frost Bank’s community development lending was excellent in both the Houston and Dallas AAs and noted that the bank was a leader in community development lending in both AAs.

Examiners found that Frost Bank’s investments demonstrated excellent responsiveness to the most pressing credit and community development needs throughout the bank’s AAs. In addition, examiners found that the bank had an excellent level of qualified community development investments and grants, particularly those types not routinely provided by private investors, and was often in a leadership position throughout all of its AAs, including in the Houston and Dallas AAs. Examiners noted that the bank had invested in companies that made loans to small business owners with limited access to traditional bank credit, Ginnie Mae mortgage-backed securities targeted to LMI borrowers, and general obligation bonds targeted to school districts in which over 75 percent of the students were economically disadvantaged. In both the Houston and Dallas AAs, examiners found that the bank exhibited excellent responsiveness to credit and community development needs through its investment activities, which included investments in and donations to organizations involved primarily in affordable housing initiatives.

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<sup>21</sup> The Frost Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business lending activities reported by the bank from January 31, 2015, through December 31, 2017. The evaluation period for community development lending, investments, and services was from January 1, 2015, through December 31, 2017. Retail branching activity was reviewed for the period of January 1, 2015, through August 13, 2018.

<sup>22</sup> The Frost Bank Evaluation included a full-scope review of the bank’s AAs within the following areas: Corpus Christi, Texas, Metropolitan Statistical Area (“MSA”); Dallas-Plano-Irving, Texas, Metropolitan Division (“Dallas AA”); Houston-The Woodlands-Sugar Land, MSA (“Houston AA”); and San Antonio-New Braunfels, Texas, MSA. Limited-scope reviews were conducted in Frost Bank’s remaining AAs within the following areas: Austin-Round Rock-San Marcos, Texas, MSA; Brownsville-Harlingen, Texas, MSA; Fort Worth-Arlington, Texas, Metropolitan Division; McAllen-Edinburg-Mission, Texas, MSA; Midland, Texas, MSA; and Odessa, Texas, MSA.

Examiners found that Frost Bank's retail delivery systems were readily accessible to geographies and individuals of different income levels within the bank's AAs. Examiners further found that Frost Bank provided a relatively high level of community development services throughout its AAs. Examiners noted that the bank's record of opening and closing branches during the review period generally did not adversely affect the accessibility of banking services to LMI geographies and/or individuals. Examiners also noted that the bank's banking services and business hours did not vary in a way that inconvenienced any portion of the bank's AAs, including LMI geographies and individuals. Moreover, examiners determined that Frost Bank was a leader in providing community development services throughout its AAs and that community development services were excellent in all ten of the bank's AAs, including the Houston and Dallas AAs.

#### *Frost Bank's Efforts since the Frost Bank Evaluation*

Frost Bank represents that, since the Frost Bank Evaluation, it has continued to help meet the credit needs of its AAs, including the needs of LMI communities and individuals. Frost Bank represents that it has continued to make community development loans that promote affordable housing and support economic development and revitalization, as well as loans to organizations providing community services to LMI individuals and families. In addition, the bank asserts that it has continued to purchase mortgage-backed securities secured by mortgage loans made to LMI borrowers, invested in school bonds that fund economically disadvantaged school districts throughout Texas, and made contributions to benefit the community directly in each of the bank's AAs, including in Houston and Dallas. The bank represents that it has continued to make available a low-cost checking account and low-cost unsecured and secured home improvement loans for LMI individuals. Additionally, Frost Bank asserts that it has continued to provide financial education for youths, adults, seniors, and small businesses and has conducted educational events for LMI homeowners on home improvement, home-improvement loan options, and available government programs and services in its AAs, including in Houston and Dallas.

#### *Additional Supervisory Considerations*

In addition to the Frost Bank Evaluation, the Board has considered the results of a 2017 examination of Frost Bank's compliance with the requirements of the Fair Housing Act, which included a redlining review of the bank's ten AAs, including those in Houston and Dallas. The review included an evaluation of the bank's redlining risk for each of those markets with respect to the bank's designation of assessment areas and lending, branching, marketing, and outreach activities. In addition, the Board has considered Frost Bank's supervisory record with the Consumer Financial Protection Bureau.

#### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Frost Bank asserts that the proposed branches would provide economic benefits and a broad range of financial services to the markets to be served and enable the bank to reach more consumers and businesses. Frost Bank further represents that, because of the branch expansion activity in the Houston area, Frost Bank is adding a second Community Development Officer to work closely with local agencies and community organizations within designated communities to ensure adequate coverage of CRA-service-related activities in the Houston AA.

### *Conclusion on Convenience and Needs Considerations*

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

### **Conclusion**

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.<sup>23</sup> The Board's approval is specifically conditioned on compliance by Frost Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with this proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective June 20, 2019.

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

Michele Taylor Fennell  
*Assistant Secretary of the Board*

### **Appendix A**

#### **Branches to Be Established by Frost Bank**

Houston-The Woodlands-Sugar Land MSA Branches:

- 19961 US Highway 59, Humble, Texas 77338
- South Mason Road and Mason Access Road, Katy, Texas 77450
- 201 South FM 270, League City, Texas 77573
- 10420 Louetta Road, Suite 120, Houston, Texas 77070

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<sup>23</sup> The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notices of the applications were published in the relevant newspapers of general circulation in accordance with the requirements of and for the period set forth in 12 CFR 208.6(a)(3). In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.



- 2200 North Frazier Street, Conroe, Texas 77303
- 3500 Little York Road, Suite B1, Houston, Texas 77093
- 8350 Long Point Road, Houston TX 77055

Corpus Christi MSA Branches:

- 501 South Shoreline Boulevard, Corpus Christi, Texas 78401
- 7444 South Padre Island Drive, Corpus Christi, Texas 78412

McAllen-Edinburg-Mission MSA Branches:

- 1010 North Westgate Drive, Weslaco, Texas 78596