



Legal Developments: Third Quarter, 2017

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Veritex Holdings, Inc.
Dallas, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-18 (July 6, 2017)

Veritex Holdings, Inc. (“Veritex Holdings”), Dallas, Texas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Sovereign Bancshares, Inc. (“Sovereign Bancshares”), and thereby indirectly acquire Sovereign Bank, both of Dallas, Texas.

In addition, Veritex Holdings’ subsidiary state member bank, Veritex Community Bank (“Veritex Bank”), Dallas, Texas, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Sovereign Bank, with Veritex Bank as the surviving entity.³ Veritex Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Sovereign Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 8425 (January 25, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Veritex Holdings, with consolidated assets of approximately \$1.4 billion, is the 524th largest insured depository organization in the United States.⁶ Veritex Holdings controls approximately \$1.1 billion in consolidated deposits, which represent less than 1 percent of

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of December 31, 2016, unless otherwise noted.

the total amount of deposits of insured depository institutions in the United States.⁷

Veritex Holdings controls Veritex Bank, which operates only in Texas. Veritex Holdings is the 64th largest insured depository organization in Texas, controlling deposits of approximately \$1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁸

Sovereign Bancshares, with consolidated assets of approximately \$1.1 billion, is the 670th largest insured depository organization in the United States, controlling approximately \$857.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sovereign Bancshares controls Sovereign Bank, which operates only in Texas. Sovereign Bancshares is the 80th largest insured depository organization in Texas, controlling deposits of approximately \$814.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Veritex Holdings would become the 338th largest insured depository organization in the United States, with consolidated assets of approximately \$2.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Veritex Holdings would control consolidated deposits of approximately \$2.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Veritex Holdings would become the 38th largest insured depository organization in Texas, controlling deposits representing less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁹ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

Veritex Holdings and Sovereign Bancshares have subsidiary depository institutions that compete directly in the Dallas, Texas, banking market (“Dallas market”).¹¹ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market (“market deposits”) that Veritex Holdings would control;¹² the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index

⁷ In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

⁸ State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

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

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

¹¹ The Dallas market includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie and Ferris in Ellis County, all in Texas.

¹² Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g.,*

(“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹³ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Dallas market. On consummation of the proposal, the Dallas market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.¹⁴

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁵ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations’ significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete 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

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).

¹³ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁴ Veritex Holdings operates the 23rd largest depository institution in the Dallas market, controlling approximately \$1.0 billion in deposits, which represent less than 1 percent of market deposits. Sovereign Bancshares operates the 28th largest depository institution in the same market, controlling approximately \$539.7 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Veritex Holdings would become the 16th largest depository organization in the market, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of market deposits. The HHI for the Dallas market would increase by 1 point to 1792, and 121 competitors would remain in the market.

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

the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Veritex Holdings and Sovereign Bancshares are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with a subsequent merger of Veritex Bank and Sovereign Bank.¹⁶ The asset quality, earnings, and liquidity of both Veritex Bank and Sovereign Bank are consistent with approval, and Veritex Holdings appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

The Board also has considered Veritex Holdings' plans for implementing the proposal. Veritex Holdings has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Veritex Holdings would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Veritex Holdings' management has the experience and resources to operate the combined organization in a safe and sound manner, and Veritex Holdings plans to integrate Sovereign Bancshares' existing management and personnel in a manner that augments Veritex Holdings' management.¹⁷

Based on all the facts of record, including the supervisory records of Veritex Holdings, Sovereign Bancshares, and their subsidiary banks, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of

¹⁶ To effect the holding company merger, a wholly owned subsidiary of Veritex Holdings formed to facilitate the transaction would merge with Sovereign Bancshares, with Sovereign Bancshares as the surviving entity, and immediately thereafter Sovereign Bancshares would merge with Veritex Holdings, with Veritex Holdings as the surviving entity. Upon consummation of that merger, each share of Sovereign Bancshares common stock would be entitled to receive a portion of the aggregate merger consideration, which would consist of Veritex Holdings common stock and cash. Sovereign Bank would then merge with and into Veritex Bank, with Veritex Bank as the surviving entity. Veritex Holdings has the financial resources to effect the transaction.

¹⁷ On consummation, Sovereign Bancshares' president and chief executive officer, as well as the chairman of its board of directors, will be appointed to the boards of directors of Veritex Holdings and Veritex Bank. Additionally, one of these individuals is expected to be appointed vice chairman of the board of directors of Veritex Holdings.

Veritex Holdings and Sovereign Bancshares in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁰ and requires the appropriate federal financial supervisory agency to assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²¹

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

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 Veritex Bank and Sovereign Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Veritex Holdings; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from one commenter opposing the proposal. The commenter alleged that Veritex Bank discriminates against African Americans and “redlines” African American neighborhoods, particularly in the Dallas and Houston areas,²² both in Texas, with respect to its branching, marketing, and lending activities.²³ The commenter also alleged that Veritex Bank has designated its CRA assessment area in a manner that excludes majority African American neighborhoods in Dallas. In addition,

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

¹⁹ 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

²⁰ 12 U.S.C. § 2901(b).

²¹ 12 U.S.C. § 2903.

²² Veritex currently has no branch locations in Houston.

²³ 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 alleged that Sovereign Bank also discriminates against African Americans and redlines African American neighborhoods.

Businesses of the Involved Institutions and Response to Comments

Veritex Holdings and Veritex Bank offer a range of financial products and services to individual customers and businesses. Veritex Bank is a full-service retail bank offering agricultural, commercial, home purchase, home improvement, home equity, and vehicle loans. Through its network of 11 branches, Veritex Bank offers a wide range of deposit products including various checking accounts, savings accounts, certificates of deposit, individual retirement accounts, money market accounts, and NOW accounts. Veritex Bank also provides automated teller machines, debit cards, and internet banking.

Sovereign Bancshares and Sovereign Bank offer deposit and loan products and specialize in commercial banking activities. Sovereign Bank offers a range of financial products and services to individual customers and businesses, including business loans, commercial real estate lending, and consumer deposit products.

Veritex Holdings denies the commenter's allegations of discriminatory lending and redlining with respect to the branching, marketing, and lending activities of Veritex Bank. Veritex Holdings asserts that Veritex Bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations, and asserts that Veritex Bank designated the entirety of two counties in the Dallas area as its CRA assessment area,²⁴ in part to ensure that no LMI or high minority census tracts were excluded or neglected. Veritex Holdings further asserts that Veritex Bank's management is committed to ensuring that no geographic areas are excluded by branch location decisions. With respect to fair lending, Veritex Holdings asserts that the bank has implemented policies and procedures to ensure fair lending compliance, including an equal credit opportunity policy and a fair lending policy, among others. Veritex Holdings represents that Veritex Bank monitors and reviews loan policies and practices for the purpose of measuring compliance with fair lending laws and equal credit opportunity requirements, and that this monitoring includes internal and external audits, as well as training programs.

In response to the commenter's criticism that Veritex Bank has no advertising or marketing efforts directed at African American communities, Veritex Holdings asserts that Veritex Bank has directed advertising and marketing efforts towards individuals and small businesses in areas typically underserved by banks, including African American communities. Veritex Holdings represents that these marketing efforts include partnerships with various community organizations, including one that facilitates micro lending to low- and moderate-income individuals.

The commenter also noted that Sovereign Bank discriminates against African Americans and redlines in African American neighborhoods. Veritex Holdings notes that as part of its community development activities, a majority of Sovereign Bank's community development loans have been to borrowers in predominantly minority census tracts. Veritex Holdings represents that as part of Sovereign Bank's CRA efforts, it has made qualified donations to organizations that help to support financial literacy and money management to individuals in census tracts that are over 50 percent minority, as well as to organizations that focus on housing, ending homelessness, and providing other social services targeted to LMI individuals in the Dallas metropolitan area. Further, Veritex Holdings represents that, through Sovereign Bank branch locations, bank personnel provide community develop-

²⁴ These counties, the Dallas and Collin counties, are defined below.

ment services to organizations located in predominantly minority census tracts and meet with different community groups, including an alliance for the homeless, which helps the bank better understand the needs of the communities it serves. Veritex Holdings also represents that Sovereign Bank has implemented processes to comply with anti-discrimination requirements, including the establishment of a fair lending committee that reviews, among other things, high-rate loans and consumer loans with origination fees.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to the information provided by the public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁵ In this case, the Board considered the views of its supervisory staff and of examiners from the Federal Reserve Bank of Dallas ("Reserve Bank") and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁶ 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.²⁷

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available Home Mortgage Disclosure Act ("HMDA")²⁸ data, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance.²⁹ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments; the extent to which they provide community development services; and their responsiveness to community development lending, investment, and service needs.³⁰

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

²⁶ 12 U.S.C. § 2906.

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁸ 12 U.S.C. § 2801 *et seq.*

²⁹ See 12 CFR 228.26(b).

³⁰ See 12 CFR 228.26(c).

CRA Performance of Veritex Bank

Veritex Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 (“Veritex Bank Evaluation”).³¹ The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test. The Veritex Bank Evaluation included full-scope evaluations of Dallas and Collin counties in the Dallas-Plano-Irving Metropolitan Division, an area of concern to the commenter.

Examiners concluded that the bank’s performance demonstrated a reasonable responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank’s HMDA and small business loans were originated inside its assessment area. Examiners found that the bank’s net loan-to-deposit ratio was considered reasonable, given the bank’s size and financial condition, the credit needs of the assessment area, and the competitive local banking environment.

Examiners also found that the bank’s distribution of lending to borrowers reflected a reasonable penetration among individuals of different income levels (including LMI borrowers) and that the geographic dispersion of the bank’s lending was reasonable given the performance context. Examiners determined that the distribution of HMDA loans by borrower income level was reasonable given the high level of competition in the assessment area and low volume of loans originated to LMI borrowers by the aggregate lenders. Loans were generally made in close proximity to the bank’s branches, and there were no conspicuous gaps or anomalies in the lending patterns. The distribution of the remainder of bank lending in middle- and upper-income geographies did not affect the conclusions about the bank’s performance considering its lending in LMI geographies. With respect to small business lending, examiners found geographic distribution to be reasonable.

Examiners also determined that Veritex Bank’s responsiveness to community development needs was adequate considering the bank’s capacity and its primary focus as a commercial lender. Examiners noted that the bank applied its community development resources strategically to meet community needs, primarily through qualified loans and community services targeted to LMI individuals in its community, and that the bank provided community development services through its branches in LMI areas. Examiners found that the bank provided a high level of retail services in its assessment area. Specifically, examiners found Veritex Bank’s delivery systems to be accessible to geographies and individuals of different income levels in its assessment area. Examiners also noted that the bank’s record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals, and that its services did not vary in a way that inconvenienced its assessment area, particularly LMI geographies and individuals.

CRA Performance of Sovereign Bank

Sovereign Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of March 30, 2015 (“Sovereign Bank Evaluation”).³² Sovereign Bank received a “Satisfactory” rating for the Lending Test and an

³¹ The Veritex Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Veritex Bank in 2014 and 2015 and small business loans originated by the bank between April 1, 2016, and September 30, 2016. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from November 12, 2013, through January 23, 2017.

³² The Sovereign Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business loans originated by the bank from January 1, 2014,

“Outstanding” rating for the Community Development Test. Although Sovereign Bank’s overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank’s records in the Dallas, Texas MSA AA due to the higher volume of loans in that area.

For the Lending Test, examiners evaluated Sovereign Bank’s small business loans. Based on this evaluation, examiners found that Sovereign Bank’s loan-to-deposit ratio reflected reasonable responsiveness to credit needs in its assessment areas given its size and financial condition. Examiners found that Sovereign Bank originated a majority of its lending within the bank’s assessment areas. Specifically, examiners noted that Sovereign Bank originated a majority of its small business loans by number and dollar volume inside of its assessment areas. Examiners found that Sovereign Bank displayed a reasonable level of penetration regarding its distribution of loans based on borrower profile and that the bank’s record of lending to businesses of different sizes reflected a reasonable performance. Examiners also found that Sovereign Bank demonstrated a reasonable record of geographically distributing its loans throughout the assessment areas. Examiners found that the bank’s lending in moderate-income areas reflected reasonable performance, but lending in low-income census tracts demonstrated poor performance. However, examiners noted that the geographic distribution of the bank’s small business loans reflected a reasonable record of lending within the assessment areas when performance context factors that mitigate the bank’s small business loan originations in LMI census tracts were considered. These performance context factors include (1) the bank’s concentrated marketing efforts in LMI areas to increase small business loan volume through its Small Business Administration Loan Programs, such as by mailing out letters advertising the program in each assessment area, and (2) the bank’s targeting of businesses, and specifically those with gross annual revenues of less than \$1 million, in the bank’s low-income census tracts. Overall, examiners noted that, considering efforts made to increase small business lending in LMI areas and the heavy concentration of bank competition in the Dallas MSA AA, the bank’s geographic distribution of small business loans reflected reasonable dispersion.

With respect to community development, examiners considered Sovereign Bank’s community development loans, community development investments, and community development services. Examiners found that Sovereign Bank demonstrated an excellent record regarding its community development lending. Examiners also found that Sovereign Bank exhibited an adequate record regarding its community development investments and donations. Specifically, examiners noted that the bank had adequate responsiveness to community development needs combined with an adequate level regarding the number and dollar volume of community development investments and donations. Examiners found that Sovereign Bank established an excellent record of providing community development services to LMI individuals through its contribution of financial expertise and involvement in activities directed at LMI individuals and families. Examiners further noted that Sovereign Bank provided a range of banking products and services to meet the needs of consumer and commercial customers and that its branch offices and delivery systems were readily accessible to LMI borrowers.

through December 31, 2014. Because commercial loans comprised approximately 49 percent of the bank’s loan portfolio and its primary product line, examiners focused the Lending Test on small business loans. For the Community Development Test, examiners reviewed the bank’s qualified community development lending, investments, and service activities from June 19, 2012, through March 30, 2015.

The Sovereign Bank Evaluation included a full-scope review of performance in the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area Assessment Area (“Dallas, Texas MSA AA”); and a limited-scope review of performance in the Austin-Round Rock, Texas MSA assessment area and the Houston-The Woodlands-Sugar Land, Texas MSA assessment area.

Sovereign Bank's Efforts since the Sovereign Bank Evaluation

Veritex Holdings represents that since the Sovereign Bank Evaluation, Sovereign Bank has worked to continue to serve its communities through its small business lending, community service activities, outreach efforts, investments, and donations. Specifically, Veritex Holdings represents that since its last evaluation, Sovereign Bank has continued to provide for community development services through non-profit organizations to LMI individuals and that the bank's employees have continued to serve its communities through work on the boards of directors of non-profit organizations. Veritex Holdings represents that Sovereign Bank's CRA committee meets with different community groups, which helps the bank understand the needs of the communities it serves.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of Veritex Bank conducted by Reserve Bank examiners, which included a review of the compliance management program and the banks' compliance with consumer protection laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Veritex Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls.

The Board also has considered the results of a recent consumer compliance examination of Sovereign Bank conducted by FDIC examiners, which included a review of the bank's compliance management system and the bank's compliance with consumer protection laws, including fair lending laws and regulations.

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. Veritex Holdings represents that it has no plans to discontinue any significant product or service currently offered by Veritex Bank or Sovereign Bank. Specifically, Veritex Bank represents that it will continue to offer customers a range of deposit and credit products and services that benefit the communities in which Veritex Bank and Sovereign Bank each presently conduct business, including those credit products and services that fulfill the needs of LMI demographics. Veritex Bank represents that, following the proposed transaction, customers of Sovereign Bank would have access to a complement of products and services that are more expansive than those currently available to Sovereign Bank customers, including residential mortgage loan products, and that Sovereign Bank customers would also have increased access to Veritex Bank's offices by telephone and online applications, which may increase access to banking services. In addition, Veritex Bank asserts that customers of both institutions would benefit from a more expansive branch and ATM network. Following the proposed transaction, Veritex Bank represents that it will continue to provide a level of service consistent with Veritex Bank's current CRA performance.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Veritex Bank, public comments 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 concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal’s “risk to the stability of the United States banking or financial system.”³³

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁴ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁵

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. 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.³⁷ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

³³ Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

³⁴ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁶ 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.

³⁷ Veritex Holdings primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, and treasury management. Sovereign Bancshares primarily offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Veritex Holdings has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

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

Establishment of Branches

Veritex Bank has applied under section 9 of the FRA to establish branches at the current locations of Sovereign Bank.³⁸ The Board has assessed the factors it is required to consider when reviewing an application under that section.³⁹ Specifically, the Board has considered Veritex 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.⁴⁰ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁴¹ 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. Approval of this proposal is specifically conditioned on compliance by Veritex Holdings and Veritex Bank with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

³⁸ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of Veritex Bank's branches would be permissible under applicable state law. See Tex. Fin. Code §§ 32.203; 32.301(c).

³⁹ 12 U.S.C. § 322; 12 CFR 208.6.

⁴⁰ Upon consummation of the proposed transaction, Veritex Bank's investments in bank premises would remain within legal requirements, under 12 CFR 208.21.

⁴¹ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board 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. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on January 25, 2017, and in the relevant newspaper of general circulation (*The Dallas Morning News*) on January 13, January 20, and February 10, 2017. The comment period ended on February 12, 2017. 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.

By order of the Board of Governors, effective July 6, 2017.

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

Appendix

Branches to Be Established by Veritex Bank

1. 600 West 5th Street, Austin, Texas 78701
2. 150 South Bell Boulevard, Cedar Park, Texas 78613
3. 17950 Preston Road, Suite 100, Dallas, Texas 75252
4. 6060 Sherry Lane, Dallas, Texas 75225
5. 7255 North State Highway 161, Irving, Texas 75039
6. 3800 Matlock Road, Arlington, Texas, 76015
7. 2438 East Southlake Boulevard, Southlake, Texas 76092
8. 2800 West 7th Street, Fort Worth, Texas 76107
9. 5111 San Felipe, Houston, Texas 77056
10. 777 Post Oak Boulevard, Suite 700, Houston, Texas 77056

PacWest Bancorp Beverly Hills, California

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2017-24 (September 21, 2017)

PacWest Bancorp (“PacWest”), Beverly Hills, California, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire CU Bancorp and thereby indirectly to acquire CU Bancorp’s subsidiary bank, California United Bank, both of Los Angeles, California. Following the proposed acquisition, California United Bank would be merged into PacWest’s subsidiary bank, Pacific Western Bank, Beverly Hills, California.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 21,390 (May 8, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

PacWest, with consolidated assets of approximately \$22.2 billion, is the 77th largest insured depository organization in the United States. PacWest controls approximately \$16.3 billion in consolidated deposits through Pacific Western Bank, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Pacific Western Bank operates in California and North Carolina. Pacific Western Bank is the 15th largest insured depository institution in California, controlling approximately \$11.2 billion in deposits, which represent approximately 0.9 percent of the total deposits held by insured depository institutions in that state.⁶

CU Bancorp, with consolidated assets of approximately \$3.0 billion, is the 288th largest insured depository organization in the United States, controlling approximately \$2.8 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. CU Bancorp controls California United Bank, which operates in California. California United Bank is the 40th largest insured depository institution in California, controlling approximately \$2.4 billion in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in that state.

On consummation of the proposal, PacWest would become the 70th largest insured depository organization in the United States, with consolidated assets of approximately \$25.4 billion,⁷ which represent less than 1 percent of the total assets of insured depository organizations in the United States. PacWest would control total deposits of approximately \$19.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In California, PacWest would become the 14th largest insured depository organization, controlling deposits of approximately

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

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

⁴ 12 CFR 262.3(b).

⁵ Nationwide asset data are as of June 30, 2017, and deposit data are as of March 31, 2017, unless otherwise noted.

⁶ State deposit data are as of June 30, 2016, unless otherwise noted.

⁷ Asset data are as of March 31, 2017.

\$13.6 billion, which represent approximately 1.1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

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

PacWest and CU Bancorp have subsidiary depository institutions that compete directly in the Los Angeles, California, banking market (“Los Angeles market”) and the Oxnard-Thousand Oaks-Ventura, California, banking market (“Oxnard market”).¹⁰ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market that PacWest would control;¹¹ the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹² and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Los Angeles market and the Oxnard market. On consummation of the proposal, the Los Angeles market would remain unconcentrated and the Oxnard market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in these markets would be small, and numerous competitors would remain in each market.¹³

⁸ 12 U.S.C. § 1842(c)(1).

⁹ 12 U.S.C. § 1842(c)(1)(B).

¹⁰ The Los Angeles market is defined as the Los Angeles metropolitan area in Los Angeles and Orange Counties, the western portions of San Bernardino and Ventura Counties, and the southernmost edge of Kern County. The Oxnard market is defined as the Oxnard-Thousand Oaks-Ventura metropolitan area in Ventura County and the extreme western tip of Los Angeles County.

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

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

¹³ In the Los Angeles market, PacWest operates the 13th largest depository institution, controlling approximately \$7.2 billion in deposits, which represent 1.43 percent of market deposits. CU Bancorp operates the 24th largest depository institution in the Los Angeles market, controlling deposits of approximately \$2.1 billion, which represent 0.43 percent of market deposits. On consummation of the proposed transaction, PacWest would become the 11th largest depository organization in the Los Angeles market, controlling deposits of \$9.3 billion, which represent approximately 1.86 percent of market deposits. The HHI for the Los Angeles market would increase 1 point to 923, and 124 competitors would remain in the market.

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

Based on the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Los Angeles or Oxnard banking markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

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

PacWest and CU Bancorp are both well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a combination of cash and share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁴ The asset quality, earnings, and liquidity of both Pacific Western Bank and California United Bank are consistent with approval, and PacWest appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are 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 PacWest, CU Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the

In the Oxnard market, PacWest operates the 8th largest depository institution, controlling approximately \$549.3 million in deposits, which represent 3.24 percent of market deposits. CU Bancorp operates the 10th largest depository institution in the Oxnard market, controlling approximately \$265.6 million in deposits, which represent 1.57 percent of market deposits. On consummation of the proposed transaction, PacWest would become 7th largest depository institution in the Oxnard market, controlling deposits of \$815.0 million, which represent approximately 4.81 percent of market deposits. The HHI for the Oxnard market would increase 10 points to 1506, and 23 competitors would remain in the market.

¹⁴ As part of the proposed transaction, each share of CU Bancorp common stock would be converted into a right to receive a cash amount and PacWest common stock based on a fixed exchange ratio. PacWest has the financial resources to fund the acquisition.

Board has considered information provided by PacWest, the Board's supervisory experiences with PacWest and CU Bancorp and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by the commenters.

PacWest and Pacific Western Bank are both considered to be well managed. PacWest's existing risk-management program and its directors and senior management are considered to be satisfactory. The directors and senior executive officers of PacWest have substantial knowledge of and experience in the banking and financial services sectors.

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

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁵ 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 currently helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA"). The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹⁶ 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.¹⁷

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

¹⁵ 12 U.S.C. § 1842(c)(2).

¹⁶ 12 U.S.C. § 2901(b).

¹⁷ 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Pacific Western Bank and California United Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC"); confidential supervisory information; information provided by PacWest; and the public comments received on the proposal.

Public Comments Regarding the Proposal

In this case, three commenters objected to the proposal based on alleged deficiencies in the CRA performance of Pacific Western Bank. All three commenters alleged that Pacific Western Bank has displayed an inadequate record of serving low-income communities and minority-owned businesses, and two commenters asserted that Pacific Western Bank has been deficient in serving non-urban communities. Commenters criticized Pacific Western Bank's record of CRA investments, alleging that the bank's current CRA investments and future commitments, as detailed in its CRA plan, lag behind several of its peers and requested that Pacific Western Bank develop a new CRA plan with input from community groups.¹⁸ Commenters expressed concerns about the number of Pacific Western Bank's loans to small businesses located in low-income census tracts. A commenter also alleged that Pacific Western Bank is unwilling to set quantitative goals to contract with minority-owned businesses. A commenter expressed concern that banks in California were engaged in the practice of providing "displacement mortgages"¹⁹ and thereafter requesting CRA credit. The commenter requested that the Board investigate whether either Pacific Western Bank or California United Bank had engaged in this practice. The FDIC considered the same adverse comments in connection with its review of the underlying bank merger application.

The Board also received comments from four commenters supporting the application. These commenters generally described the benefits Pacific Western Bank provides to the communities it serves, including various projects and partnerships between Pacific Western Bank and community groups. For instance, these commenters noted the bank supports educational programs targeting underserved students and financial literacy programs for LMI youth.

Business of the Involved Institutions and Response to Comments

Pacific Western Bank is a full-service commercial bank headquartered in Beverly Hills, California, focusing on business banking for small, middle-market, and venture-backed businesses nationwide. It offers a broad range of loan and deposit products and services, including demand, money market, and time deposit accounts; savings and individual retirement accounts; and loan and lease originations, which encompass commercial real estate loans, equipment loans and leases, asset-based loans, loans to finance companies, cash flow

¹⁸ The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., *CIT Group, Inc.*, FR Order No. 2015-20 at 24 fn. 54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp.*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

¹⁹ The commenter used the term "displacement mortgages" to refer to the origination of mortgages to investors who purchase rent-controlled buildings and then invoke the Ellis Act, which allows them to evict all of the tenants of the buildings in order to exit the rental business and convert the buildings to condominiums or tenancies in common.

loans, and Small Business Administration-guaranteed and consumer loans. Pacific Western Bank has 73 full-service retail branches throughout California and one branch located in Durham, North Carolina. PacWest's principal business is to serve as the holding company for Pacific Western Bank.

California United Bank is a full-service commercial bank with headquarters in Los Angeles California. In addition to its headquarters office, it has eight additional full-service branches in southern California. California United Bank offers products and services for business consumers, including deposit services, lending and cash management to small and medium-sized businesses, nonprofit organizations, business principals, and entrepreneurs, as well as commercial, real estate construction, Small Business Administration-guaranteed, and personal loans.

In response to the comments, PacWest asserts that approval is justified based on Pacific Western Bank's most recent CRA performance evaluation. PacWest notes that Pacific Western Bank has a "Satisfactory" CRA rating and states that the bank has strived to obtain an "Outstanding" CRA rating since its most recent CRA performance evaluation. PacWest references the letters the Board received in support of the application as demonstrating the close working relationship the bank has with community organizations. PacWest also notes that there is no general requirement to submit a CRA plan as a prerequisite for approval of an application. PacWest further argues that the comments opposing the application mischaracterize Pacific Western Bank's current CRA plan and that the plan supports a balanced approach that takes into consideration a mix of innovative investment opportunities that allow the bank to have a greater impact on the communities it serves. PacWest represents that the bank's current CRA plan addresses community development activities throughout its markets in California, including those in non-urban areas.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁰

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

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze

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

²¹ 12 U.S.C. § 2906.

an institution's data reported under the Home Mortgage Disclosure Act,²² in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's 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;²³ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Pacific Western Bank

Pacific Western Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation, as of October 27, 2014 ("Pacific Western Bank Evaluation").²⁴ Pacific Western Bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and an "Outstanding" rating for the Service Test.

Examiners found that Pacific Western Bank's lending levels reflected good responsiveness to the credit needs of its AAs. Examiners also noted that a substantial majority of Pacific Western Bank's loans were originated within its AAs and that the distribution of borrowers, given the product lines offered by the bank, reflected adequate penetration among business customers of different revenue sizes. Examiners noted that the geographic distribution of loans reflected good penetration throughout Pacific Western Bank's AAs. Examiners also found that Pacific Western Bank made a relatively high level of community development loans and that it exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas, low-income individuals, and very small businesses, consistent with safe and sound banking practices. Examiners found that the bank made limited use of innovative or flexible lending practices in serving the credit needs in its AAs.

Examiners found that Pacific Western Bank had a significant level of qualified community development investments and grants and was occasionally in a leadership position, particularly with regard to investments that were not routinely provided by private investors. Examiners noted that the bank exhibited good responsiveness to credit and community economic development needs and that it made significant use of innovative or complex investments to support community development initiatives.

²² 12 U.S.C. § 2801 *et seq.*

²³ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$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).

²⁴ The Pacific Western Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans originated from January 1, 2012, through June 30, 2014. The evaluation period for community development loans, investments, and services was from October 10, 2010, through October 27, 2014. As of the evaluation date, each of the bank's AAs was located in California. Examiners conducted full-scope reviews of the Los Angeles and San Diego AAs of the bank. The examiners performed limited-scope reviews of the bank's performance in the bank's remaining AAs, including San Luis Obispo, Santa Barbara, San Francisco, Fresno, Kern, and Kings-Tulare.

Examiners found that Pacific Western Bank's delivery systems were accessible to essentially all portions of the bank's AAs. Examiners also found that Pacific Western Bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals, and that the bank's services, including, where appropriate, business hours, did not vary in a way that inconvenienced certain portions of its AAs, particularly LMI geographies and individuals. Examiners noted that Pacific Western Bank was a leader in providing community development services.

Pacific Western Bank's Activities since the Pacific Western Bank Evaluation

PacWest asserts that, since the Pacific Western Bank Evaluation, the bank has established a multifamily-lending business unit and is making progress introducing this product within its AAs. PacWest further asserts that the bank is originating loans throughout each of its AAs in the same manner, including in LMI areas and communities with high minority composition. PacWest also states that Pacific Western Bank's community development lending has been robust, with year-over-year growth in response to a wide range of community needs, including creating and preserving affordable housing and supporting economic development. Examples included loans to purchase whole multifamily loans as a part of a recapitalization strategy of a minority-owned community development financial institution, a loan supporting the construction of a medical facility in a distressed community, and a loan for the construction of an affordable housing complex that will provide permanent homes for low-income veterans.

PacWest asserts that Pacific Western Bank has been strategic in growing its portfolio of investments with community development merit. For instance, the bank has provided financial support to a host of community projects, including affordable housing developments, capital for small businesses, and support for community organizations for the purpose of replacing or improving water wells in rural communities that experienced extreme drought. PacWest asserts that Pacific Western Bank is also participating in a campaign dedicated to helping individuals, including those from LMI households, save money, reduce debt, and build wealth. PacWest notes that the bank is also participating in a financial education program targeted to high schools with a high percentage of students on free or reduced-cost meal programs. PacWest also states that Pacific Western Bank participates in numerous small business technical assistance workshops. PacWest notes that a number of Pacific Western Bank's senior executives are actively involved in their communities through board memberships, supporting organizations that extend products and services to low-income communities.

CRA Performance of California United Bank

California United Bank was assigned an overall CRA rating of "Outstanding" at its most recent CRA performance evaluation by the FDIC, as of August 1, 2016 ("California United Bank Evaluation").²⁵ The bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment and Service Tests.

Examiners found that California United Bank's lending levels reflected good responsiveness to credit needs within its AA and that a substantial majority of its small business loans

²⁵ The California United Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed small business loans from January 1, 2014, through December 31, 2015. The evaluation period for community development loans, qualified investments, and services was from June 24, 2013, through August 1, 2016. The California United Bank Evaluation included a full-scope review of the Los Angeles-Long Beach, California, Combined Statistical Area.

were made within its AA. Examiners further found that the geographic distribution of California United Bank's small business loans reflected good penetration throughout its AA. Examiners noted that, given the product lines offered by the institution, California United Bank's distribution of borrowers reflected poor penetration among business customers of different revenue sizes. However, examiners also found that the institution exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its AA and very small businesses, consistent with safe and sound banking practices. Examiners stated that California United Bank used innovative and flexible lending practices in order to serve the credit needs of its AA and that the bank was a leader in making community development loans.

Examiners found that California United Bank had made an excellent level of qualified community development investments and grants, often in a leadership position, particularly those that were not routinely provided by private investors. Examiners further noted that the bank exhibited excellent responsiveness to credit and community economic development needs and that the institution made significant use of innovative or complex investments to support community development initiatives.

Examiners found that the bank's delivery systems were accessible to essentially all portions of the bank's AA. Examiners also found that California United Bank's hours did not vary in a way that inconvenienced any portion of its AA, particularly LMI geographies and individuals, and that, to the extent changes had been made, the institution's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners further noted that the bank was a leader in providing community development services within its AA.

California United Bank's Activities since the California United Bank Evaluation

PacWest asserts that, since the California United Bank Evaluation, California United Bank has continued its strong record of community development lending, making loans to small businesses that provided jobs to LMI individuals and loans that financed the acquisition and development of multifamily affordable housing units. PacWest asserts that California United Bank has continued to make CRA-qualified community development investments, for example an investment in a fund that established seven affordable housing projects, including within the bank's AA. PacWest asserts that California United Bank has continued to offer products and services within its AA, including administration payroll cards for LMI employees of many of the bank's borrowers. These cards do not assess fees for loading funds and include an online financial education model.

Views of the FDIC and the Consumer Financial Protection Bureau

In its review of the proposal, the Board consulted with the FDIC regarding Pacific Western Bank's CRA, consumer compliance, and fair lending records. The FDIC reviewed the bank merger underlying this proposal, including the comments received by the Board. Specifically, the Board has considered the results of the most recent consumer compliance examination of Pacific Western Bank conducted by FDIC examiners, which included a review of the bank's compliance-related policies and procedures and responses to consumer complaints, as well as transactional testing in areas exhibiting potential risk of consumer harm, new product or service offerings, and newly implemented regulations. Examiners also conducted a fair lending review with a focus on commercial lending.

The Board also consulted with the Consumer Financial Protection Bureau ("CFPB") regarding Pacific Western Bank's consumer compliance record.

The Board has taken these consultations with the FDIC and CFPB and the information discussed above into account in evaluating this proposal, including in considering whether PacWest has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to effectively serve the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. PacWest represents that, as a result of the proposal, it will not discontinue any of the services or products currently offered by either Pacific Western Bank or California United Bank. PacWest asserts that it will expand the availability of products offered to the communities currently served by California United Bank, both by increasing maximum loan limits for renewed lines of credit and by expanding offerings of direct small business loans and loans guaranteed by the Small Business Administration. In addition, PacWest represents that it would be able to offer customers of California United Bank increased credit availability and expanded access to financial products and services from an expanded branch network.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system."²⁶

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.²⁷ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the

²⁶ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

²⁷ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.²⁸

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail commercial banking activities.³⁰ 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 markets that it would pose significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.³¹ 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 PacWest with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connec-

²⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

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

³⁰ Both PacWest and CU Bancorp primarily engage in retail and commercial banking activities, and PacWest would continue to have a small market share following the proposed transaction.

³¹ Three commenters requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, 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 represent their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the requests did not demonstrate why written comments do not present the commenters' views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

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

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

By order of the Board of Governors, effective September 21, 2017.

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

Orders Issued Under Section 4 of the Bank Holding Company Act

Sterling Bancorp
Montebello, New York

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Saving Association
FRB Order No. 2017–21 (August 30, 2017)

Sterling Bancorp (“Sterling”), Montebello, New York, a financial holding company within the meaning of the Bank Holding Company Act of 1956, as amended (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act¹ to acquire Astoria Financial Corporation (“Astoria”), Lake Success, New York, a savings and loan holding company, and thereby indirectly acquire its subsidiary, Astoria Bank, Long Island City, New York, a federal savings association. Following the proposed acquisition, Astoria would be merged into Sterling, and Astoria Bank would be merged into Sterling’s subsidiary bank, Sterling National Bank (“Sterling Bank”), Montebello, New York.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 19048 (2017)).³ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.

Sterling, with consolidated assets of approximately \$15.4 billion, is the 100th largest insured depository organization in the United States, controlling approximately \$10.1 billion in deposits.⁴ Sterling controls Sterling Bank, which operates in New York and New Jersey. Sterling Bank is the 19th largest depository institution in New York, controlling deposits of approximately \$9.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in New York. Sterling Bank is the 67th largest depository institution in New Jersey, controlling deposits of approximately \$347.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in New Jersey.⁵

Astoria, with consolidated assets of approximately \$14.1 billion, is the 97th largest insured depository organization in the United States, controlling approximately \$9.1 billion in deposits. Astoria controls Astoria Bank, which operates solely in New York. Astoria Bank is the 20th largest insured depository institution in New York, controlling deposits of approximately \$9.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sterling would become the 62nd largest insured depository organization in the United States, with consolidated assets of approximately \$29.0 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sterling would control total deposits of approximately

¹ 12 U.S.C. §§ 1843(c)(8) and (j).

² The merger of Astoria Bank into Sterling Bank, which is expected to occur immediately after Sterling’s acquisition of Astoria, is subject to the approval of the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on August 16, 2017.

³ 12 CFR 262.3(b).

⁴ Consolidated asset data are as of June 30, 2017. Nationwide asset ranking and deposit data are as of December 31, 2016, unless otherwise noted.

⁵ State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

\$19.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, Sterling would become the 14th largest depository organization, controlling deposits of approximately \$18.6 billion, which represent less than 1.5 percent of the total deposits of insured depository institutions in New York.

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.⁶ 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.⁷ Sterling has committed that all of the activities of Astoria and its subsidiaries would conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Factors Governing Board Review of the Transactions

Because this transaction involves the acquisition of a savings association, the Board has reviewed the transaction under section 4 of the BHC Act. Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Astoria “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”⁸ As part of its evaluation, 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.⁹ The Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁰

Competitive Considerations

As part of the Board’s consideration of the factors under section 4 of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of record.¹¹

Sterling and Astoria have subsidiary depository institutions that compete directly in the Metro New York City, New York-New Jersey-Connecticut-Pennsylvania (“Metro New York City”) banking market.¹² The Board has considered the competitive effects of the

⁶ 12 CFR 225.28(b)(4)(ii).

⁷ 12 CFR 225.28(b)(4).

⁸ 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1601 (2010), added “risk to the stability of the United States banking or financial system” to the list of possible adverse effects.

⁹ See 12 CFR 225.26; see, e.g., *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012) (“Capital One Order”); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

¹⁰ The proposal does not raise interstate issues under section 4(c)(8) of the BHC Act because New York is the home state of both Sterling and Astoria Bank. See 12 U.S.C. § 1843(i)(8).

¹¹ 12 U.S.C. § 1843(j)(2).

¹² The Metro New York City market includes Fairfield County and portions of Litchfield and New Haven counties of Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties of New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties of New Jersey; and Pike County and portions of Monroe and Wayne counties of Pennsylvania.

proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that Sterling would control;¹³ the concentration levels of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁴ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Metro New York City banking market. On consummation of the proposal, the Metro New York City market would remain moderately concentrated, as measured by the HHI. The change in the HHI would be minimal, and numerous competitors would remain in the market following consummation of the proposal.¹⁵

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Metro New York City market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under section 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁶ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both a parent-only and consolidated basis, as

¹³ Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁴ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁵ Sterling operates the 23rd largest depository institution in the Metro New York City market, controlling approximately \$9.8 billion in deposits, which represent 0.6 percent of market deposits. For purposes of the HHI analysis, Astoria operates the 32nd largest depository institution in the same market and is treated as controlling approximately \$4.6 billion in deposits (i.e. actual deposits weighted at 50 percent), which represent 0.3 percent of market deposits. On consummation of the proposed transaction, Sterling would become the 16th largest depository institution in the Metro New York City market, controlling deposits of approximately \$19.0 billion, which represent 1.1 percent of market deposits. The HHI for the Metro New York City market would decrease by 6 points to 1316, and 237 competitors would remain in the market. For purposes of 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.

¹⁶ 12 U.S.C. § 1843(j)(4); 12 CFR 225.26(b).

well as information about the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including public and supervisory information regarding capital adequacy, asset quality, 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.

Sterling and Sterling Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁷ The asset quality, earnings, and liquidity of Sterling Bank and Astoria Bank are consistent with approval, and Sterling appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institution's operations. In addition, the future prospects of the institution 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 Sterling, Astoria, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sterling, the Board's supervisory experiences with Sterling and Astoria and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by the commenters.

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

The Board also has considered Sterling's plans for implementing the proposal. Sterling is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Sterling would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sterling's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Sterling plans to integrate Astoria's existing management and personnel in a manner that augments Sterling's management.¹⁸

Based on all of the facts of record, including Sterling's supervisory record, managerial and operational resources, and plans for operating the combined organization after consum-

¹⁷ As part of the proposed transaction, each share of Astoria common stock would be converted into a right to receive Sterling common stock based on a fixed exchange ratio.

¹⁸ On consummation, four individuals currently serving as directors and officers of Astoria and Astoria Bank will be added to the board of directors of Sterling and Sterling Bank.

mation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Sterling and Astoria in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 4 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served in weighing the possible adverse effects against the public benefits of the transaction.¹⁹ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁰ 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,²¹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.²²

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

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

Public Comments Regarding the Proposal

In this case, the Board received comments from three commenters. One commenter objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans made by Sterling Bank to minorities in the New York-Jersey City-White Plains, NY-NJ Metropolitan Division ("New York City MD") and in the number of conventional home purchase and home improvement loans made by Sterling Bank to minorities in the Nassau County-Suffolk County, NY Metropolitan Division ("Nassau-Suffolk MD"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")²³ for 2015 and 2013, respectively. This same commenter alleged that Sterling Bank has not complied with a CRA Plan that the OCC required it to develop in connection with a 2015 merger with Hudson Valley Bank, N.A. ("Sterling CRA Plan"). Other

¹⁹ 12 U.S.C. § 1843(j)(2).

²⁰ 12 U.S.C. § 2901 *et seq.*

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

²³ 12 U.S.C. § 2801 *et seq.*

commenters praised many aspects of Sterling's and Astoria's CRA activities, but criticized other aspects of the CRA and fair lending records of Sterling Bank and/or Astoria Bank and requested that an updated CRA Plan, reflecting formal input from community organizations, be required as a condition of approval. These commenters asserted that the updated CRA plan should include specific goals in the areas of lending, investment, and services for each of the markets served by the combined organization, particularly with respect to LMI neighborhoods and LMI census tracts. One commenter further requested that Sterling Bank commit to sharing yearly outcomes under the CRA Plan that include the number and dollar amount of those goals by each lending category, both in its entire footprint and in Long Island.²⁴

One commenter expressed concern about Sterling Bank's recent record of branch closures in New York City and also recommended certain best practices that Sterling should adopt with respect to multifamily housing lending. Another commenter stated that the merger should be conditioned on Sterling Bank retaining all of Astoria Bank's branches in Long Island.

The OCC considered the same adverse comments in connection with its review of the underlying bank merger application.²⁵

Businesses of the Involved Institutions and Response to Comments

Sterling Bank is a regional banking franchise headquartered in Montebello, New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans and deposit services to small and middle market commercial businesses. Sterling Bank's lending portfolio primarily consists of small business loans, commercial real estate loans, commercial and industrial loans, and one-to-four family residential real estate loans, with a limited residential mortgage loan and consumer loan operation.²⁶ In addition to traditional deposit and loan products, Sterling Bank offers investment products and wealth management services.

Astoria Bank, a federal savings association with 87 branches in New York, offers a full range of loans and deposit services to its customers. Astoria Bank traditionally has focused on residential real estate lending. Astoria Bank also has 10 operating subsidiaries, including a mortgage company, a broker-dealer, and single-purpose entities that manage bank-

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

²⁵ A commenter stated that Sterling Bank's CRA data had been deemed unreliable, in addition to citing HMDA data disparities in Sterling Bank's conventional home purchase and home improvement lending to whites compared to African Americans and/or Hispanics. The OCC conducted reviews of the accuracy of Sterling Bank's HMDA and CRA data and assessed fair lending risk at Sterling Bank. In that regard, the OCC evaluated supervisory information as well as other information provided by Sterling Bank. Examiners noted in the Sterling Bank CRA evaluation as of January 18, 2017 ("Sterling Bank Evaluation"), that they found errors in the data related to small business lending, which subsequently were corrected by Sterling Bank. Examiners relied on the corrected data in conducting Sterling Bank's CRA performance evaluation.

²⁶ In 2016, Sterling Bank sold its residential mortgage division to Freedom Mortgage, and the bank generally refers individuals interested in home mortgages to Freedom Mortgage. One commenter indicated that Long Island community groups have concerns regarding Freedom Mortgage. Sterling represents that Sterling Bank has no role in the mortgage application process after a referral is made to Freedom Mortgage. Sterling Bank also represents that it continues to make residential mortgages to LMI individuals through its Community Banking team.

owned assets. In addition to Astoria Bank, Astoria operates AF Insurance Agency, Inc., which provides life insurance products primarily to Astoria Bank customers.

In response to comments, Sterling highlights the updated CRA Plan that the bank provided in connection with the proposed transaction. Sterling asserts that it consulted with a number of community groups in developing the updated CRA Plan and that the bank is aware of many of the concerns mentioned by the commenters.

In addition, Sterling asserts that its fair lending program extends to every phase of a transaction, including advertising, pre-application inquiries, loan disbursement, and ongoing servicing. Sterling asserts that all mortgage applications received by Sterling Bank are reviewed in accordance with the bank's policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending. Sterling further represents that Sterling Bank's lending practices are based on criteria that ensure both safe and sound lending and equal access to credit and that the bank has comprehensive procedures and policies in place to accomplish these goals, which include an established Fair Lending Program that is approved annually by the Management Enterprise Risk Management Committee. Sterling represents that the bank's Fair Lending Program includes a "second review" process for any loan denial, ongoing fair lending training for the bank's lending personnel, an annual fair lending risk assessment conducted by a Compliance Risk Management Department, and ongoing monitoring and testing to assess fair lending compliance. Sterling represents that Sterling Bank's existing consumer compliance program, including fair lending, would apply to the combined organization.

In response to commenters' concerns about its performance under its current CRA Plan, Sterling represents that Sterling Bank has achieved or exceeded its enhanced CRA goals for the first operational year under the CRA Plan. Sterling highlighted the bank's increased activities in mortgage lending through its Community Banking team, in small business lending, and in community development lending. Sterling argues that it is challenging to glean conclusions regarding the bank's record of lending to minorities in the New York-Newark-Jersey City, NY-NJ-PA, Multistate Metropolitan Statistical Area ("New York City MMSA") based on lending data because of the low number of overall applications and originations in the New York City MMSA and the limited nature of Sterling Bank's mortgage lending program. However, Sterling represents that Sterling Bank is very active in a number of outreach and marketing programs across the bank's footprint that focus on LMI census tracts and minority communities.

Sterling asserts that Sterling Bank is committed to continuing the existing partnerships of both it and Astoria Bank with organizations that support a variety of efforts to benefit local communities. Specifically, Sterling intends to maintain Astoria Bank's membership in the New York Mortgage Coalition and expand, to the extent possible, on its partnership with the State of New York Mortgage Agency.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information, as well as information and views provided by the appropriate federal supervisors.²⁷ In this case, the Board consulted with and considered supervisory information provided by the OCC.

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

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.²⁸ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amounts of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²⁹ the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when commenters assert that HMDA data reflect disparities in the rates of loan applications, originations, or denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³⁰ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Sterling Bank

Sterling Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of January 18, 2017 ("Sterling Bank Evaluation").³¹ Sterling Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and

²⁸ 12 U.S.C. § 2906.

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

³⁰ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³¹ The Sterling Bank Evaluation was conducted using the Large Bank Examination Procedures that include the Lending, Investment and Service tests. For the lending test, examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from January 21, 2014, through January 21, 2017. As of the evaluation date, 38 of the bank's 40 branches were located within the New York City MMSA. Consequently, the greatest weight was given to the New York City MMSA in the determination

Service Test.³² Moreover, examiners found that in 2016, the first of three years under the Sterling CRA Plan, Sterling Bank met or exceeded goals established by the CRA Plan for home mortgage and small business lending, as well as for qualified investments and community development services for the New York City MMSA.

Overall, examiners found that Sterling Bank originated and purchased a substantial majority of loans within the bank's assessment areas and that the distribution of the bank's loans was good when measured by geography and adequate when measured by the income level of borrowers. In the New York City MMSA, examiners found the bank's level of lending to be good, and examiners did not identify any unexplained, conspicuous gaps in lending. The distribution of the bank's loans across borrowers of different income levels and businesses of different sizes was found to be adequate in the New York City MMSA. In addition, examiners found that, although the bank's distribution of lending to small businesses reflected poor penetration, the bank exhibited a good level of small business lending activity in the New York City MMSA.

Also in the New York City MMSA, examiners found the bank's geographic distribution of home mortgage loans to be good, while its distribution of home mortgage loans across borrowers of different income levels reflected adequate penetration. Moreover, examiners concluded that home purchase, home refinance, and home improvement lending reflected adequate distribution to LMI borrowers. In evaluating Sterling Bank's home purchase lending to LMI borrowers, examiners noted that the median housing value in the New York City MMSA significantly limited home purchase opportunities for LMI borrowers. In addition, examiners highlighted that the bank's home purchase loans to LMI borrowers were significantly higher in 2016 than in 2014. Examiners considered this trend regarding Sterling Bank's home purchase loans, as well as the bank's responsiveness by increasing its home mortgage lending to LMI borrowers after meeting with local community organizations, as factors in concluding that Sterling Bank's borrower distribution of home mortgage loans was adequate. In addition, examiners noted that Sterling Bank introduced a loan program targeted to specific LMI co-op developments in Bronx County, New York.

Overall, examiners noted that Sterling Bank had a relatively high level of community development loans that exhibited good responsiveness to community needs. In the New York City MMSA, examiners found that the bank made a good level of community development loans. Examiners reported that, during the evaluation period, Sterling Bank originated or participated in community development loans in the New York City MMSA that generally provided loans for affordable housing and for healthcare services to LMI individuals, and that revitalized or stabilized LMI areas or designated disaster areas.

Examiners found that overall Sterling Bank made a significant level of qualified investments. In the New York City MMSA, examiners found that Sterling Bank made a relatively high level of qualified investments that demonstrated good responsiveness to community needs. Examiners noted that the majority of the bank's investments in the New York City MMSA were mortgage-backed securities where the underlying home mortgages were

of the bank's overall CRA rating. Within the New York City MMSA, there is one branch office in New Jersey, in Bergen County, and the remaining MMSA branches are in Bronx County, Kings County, New York County, Orange County, Queens County, Rockland County and Westchester County, all in New York State.

³² Examiners conducted full-scope reviews of the New York City MMSA and the non-MSA Sullivan County NY assessment areas of the bank, based, in part, on the level of deposits and lending activity within each assessment area. Examiners performed a limited-scope review of the bank's performance in the Kingston NY MSA. Although examiners assessed Sterling Bank's activities in the State of New York rating area, which consisted of the bank's performance in non-MSA Sullivan County and the Kingston NY MSA, and rated the bank "Needs to Improve" for that rating area, the bank's minimal presence (two branches) and activity in the State of New York rating area limited the influence of this area on the bank's overall CRA rating.

primarily to LMI borrowers, and that the remaining qualified investments represented an excellent level of responsiveness to the housing needs of the New York City MMSA. Examiners highlighted the bank's qualified investments in municipal bonds that supported affordable housing developments and the construction and rehabilitation of LMI multi-family rental developments.

Sterling Bank's retail branching services were found to be reasonably accessible in its assessment areas. Examiners found that overall Sterling Bank provided a relatively high level of community development services. In the New York City MMSA, examiners found that the bank's delivery systems were reasonably accessible to census tracts and individuals of different income levels. Examiners also found that Sterling Bank's services did not vary in a way that inconvenienced LMI geographies in the New York City MMSA. Examiners noted that the bank's performance in providing community development services was good. In addition, examiners found that Sterling Bank's opening and closing of branches in the New York City MMSA did not adversely affect the bank's delivery systems, particularly for LMI geographies.

Sterling Bank's Activities Since the Sterling Bank Evaluation

Sterling represents that Sterling Bank continues to build upon its strong CRA foundation in 2017, based on a review of Sterling Bank's second quarter CRA Plan performance. Sterling asserts that, among other activities, Sterling Bank has invested in a Low Income Housing Tax Credit participation fund, originated an affordable mortgage, and provided a financial literacy seminar through its branch located in Sullivan County.

CRA Performance of Astoria Bank

Astoria Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of December 3, 2012 ("Astoria Bank Evaluation").³³ The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.³⁴

In evaluating the Lending Test, examiners found that the majority of Astoria Bank's lending occurred in its assessment areas. Examiners found that the bank's overall lending performance was good given the level of competition for reportable home mortgage loans and small loans to businesses in its assessment areas. In addition, examiners noted that the bank was able to achieve an overall good level of lending activity within its assessment areas even though an economic recession occurred during the evaluation period.

Overall, examiners found that Astoria Bank showed good responsiveness to the credit needs in its assessment areas and identified no conspicuous gaps in either the bank's home mortgage or small business lending. Examiners found that the bank's overall geographic

³³ The Astoria Bank Evaluation was conducted using the Large Bank Evaluation Procedures for the Lending, Investment, and Service tests. Examiners reviewed home mortgage loans reported pursuant to HMDA and small business loans reported under CRA data collection requirements from July 1, 2009, to December 31, 2011. The Lending Test evaluated the bank's loan originations and purchases of loans reportable under HMDA and small business loans from July 1, 2009, through December 31, 2011. The evaluation period for community development loans, qualified investments, and services was from July 1, 2009, to November 30, 2012. Examiners placed more weight on the bank's home mortgage lending, including purchases and refinancing, than on small loans to businesses and multifamily home mortgage loans. Examiners noted that home improvement and farm loans were not considered as none were originated during the relevant time period.

³⁴ The Astoria Bank Evaluation included a full-scope review of Astoria Bank's two assessment areas, both located within the State of New York: the New York MD assessment area and the Nassau-Suffolk MD assessment area. The New York MD assessment area was comprised of six counties in the New York-White Plains-Wayne, NY-NJ, MD. The Nassau-Suffolk MD assessment area was comprised of Nassau and Suffolk counties and is one of the four MDs that make up the New York-Northern New Jersey-Long Island, NY-NJ-PA, MSA.

distribution of home mortgage loans was poor, although the examiners noted that there were very limited opportunities to make home mortgage loans in low-income geographies in the Nassau-Suffolk MD assessment area and somewhat limited opportunities in the New York MD assessment area, given the low percentage of owner-occupied housing units in those geographies. In the New York MD assessment area, examiners found the bank's portion of multifamily lending in low-income geographies to be very poor, but found the multifamily lending in moderate-income geographies to be excellent. Examiners also found the bank's mortgage loan-to-deposit ratio to be good.

In addition, examiners found that the bank's overall distribution of lending to borrowers of different income levels was adequate. Examiners considered factors such as the cost of housing in the bank's assessment areas and the demographics of the population base in evaluating the bank's ability to make mortgage loans. Examiners also found the bank's overall geographic distribution of lending activity, including both home mortgage and small business lending, reflected adequate penetration throughout the assessment areas.

In evaluating the Investment Test, examiners found the grants provided by Astoria Bank in the Nassau-Suffolk MD assessment area to be responsive to community needs. Examiners also found the bank's grants and investments in the New York MD assessment area to be responsive to community needs.

In evaluating the Service Test, examiners found Astoria Bank's delivery systems to be reasonably accessible to essentially all portions of its assessment areas. Examiners noted that the bank's opening and closing of branches in the Nassau-Suffolk MD had not adversely affected the accessibility of its branches, including to LMI geographies and individuals, and that there were no material differences in the products and services offered in the bank's branches. Examiners further noted that, overall, the bank provided a good level of community development services in the areas in which the bank maintained an ongoing presence, including by promoting the development of affordable housing, promoting economic development within LMI geographies, or providing services that benefitted LMI individuals. Examiners found that Astoria Bank's personnel frequently took leadership positions in many of the organizations that provide community development services.

Astoria Bank's Activities Since the Astoria Bank Evaluation

Sterling represents that since the Astoria Bank Evaluation, Astoria Bank has maintained a strong CRA performance across its assessment areas. Specifically, Sterling represents that since its last evaluation, Astoria Bank has continued to originate multifamily and commercial real estate loans, primarily for rent-controlled and rent-stabilized apartment buildings in New York City and its surrounding metropolitan area, as well as residential mortgage loans. Sterling represents that Astoria Bank offers a number of mortgage products that serve LMI borrowers and communities within its assessment areas, including State of New York Mortgage Agency loans for 1-4 family residences, cooperatives, and condominiums, in addition to a portfolio of affordable mortgage loan products for persons with incomes either below 80 or below 100 percent of the area median income level. Sterling represents that, from 2013 to 2016, Astoria Bank's participation in the Federal Home Loan Bank of New York's First Home Club down payment assistance program resulted in a number of individuals receiving grants and achieving home ownership. Sterling also represents that, from 2013 to 2016, Astoria Bank sponsored two affordable housing projects that resulted in grants for 532 units of affordable housing in its assessment areas. Sterling states that the majority of Astoria Bank's mortgage originations are sourced through Astoria Bank's correspondent lending channel, through which Astoria Bank purchases mortgage loans from third-party originators. Sterling represents that Astoria Bank continues to offer Small

Business Administration loans as well as lines of credit, installment loans, standby letters of credit, and equipment financing to assist small business owners.

Sterling represents that since the Astoria Bank Evaluation, Astoria Bank has focused its community development lending, investments, and grant activities on supporting nonprofit organizations that, among other actions, expand opportunities for responsible and sustainable homeownership by minority and LMI individuals through affordable housing projects, develop affordable housing and services for special needs populations, and engage in economic development activities to assist LMI individuals or neighborhoods. Sterling also represents that Astoria Bank's community development service activities have included, among other services, providing financial-related technical assistance to nonprofit community organizations through board service and other engagements, offering technical and financial advice to small businesses, engaging in homeownership and first-time homebuyer counseling, and volunteering in affordable housing construction and renovation projects.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance assessment of Sterling Bank conducted by OCC examiners, which incorporated a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of a recent compliance examination of Astoria Bank conducted by OCC examiners, which included a review of the bank's consumer compliance function. The Board has conferred with the OCC regarding its review and has taken into consideration supervisory reviews and other relevant information. In addition, the Board has consulted with the Consumer Financial Protection Bureau.

Additional Convenience and Needs Considerations

In evaluating proposals under section 4 of the BHC Act, the Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Sterling represents that the proposal would provide customers of the combined organization access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas. Sterling represents that, with the exception of changes to Astoria Bank's mortgage lending operation, it does not intend to eliminate any material retail products or services offered by Astoria and would provide Astoria customers with a broader suite of commercial products and services. With respect to mortgage lending, Sterling represents that Sterling Bank would continue to make available a full range of residential mortgage products to customers of the combined organization through Sterling Bank's relationship with Freedom Mortgage. Moreover, Sterling represents that Sterling Bank will continue to offer residential mortgages to LMI individuals through the bank's Community Banking team. Sterling expects that the merger also would enable it to compete more effectively with national financial institutions in its assessment areas and improve its ability to meet the needs of its customers and the communities in its assessment areas.³⁵

³⁵ Sterling has committed to keep open all Astoria branches for a minimum of 90 days post consummation and will not make decisions regarding branch closures for 180 days in order to evaluate the combined branch network. Unrelated to the proposal, Sterling represents that Sterling Bank plans to relocate one branch and close two other branches, none of which are located in LMI census tracts. Sterling represents that Sterling Bank will comply with Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1) and the Joint Policy Statement Regarding Branch Closings (64 Fed. Reg. 34844 (1999)) in connection with any such closings.

Conclusion on Convenience and Needs

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

Financial Stability

The Dodd-Frank Act amended section 4 of the BHC Act to require the Board to consider the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system.³⁶

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁷ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁸

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that results 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.³⁹

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Sterling would have approximately \$29 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be likely to pose systemic risks. Both the acquirer and the target are predominately engaged in a variety of retail and commercial banking activities. The pro-forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that

³⁶ Section 604(e) of the Dodd-Frank Act, codified at 12 U.S.C. § 1843(j)(2)(A) (with respect to the acquisition of savings associations).

³⁷ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁸ For further discussion of the financial stability standard, see Capital One Order.

³⁹ 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.

would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

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 interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”⁴⁰ As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Astoria Bank. In addition, the acquisition would ensure continuity and strength of service to customers of Astoria Bank.

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 believes 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.⁴¹

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the notice should be, and hereby is, approved.⁴² In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC

⁴⁰ 12 U.S.C. § 1843(j)(2).

⁴¹ 12 U.S.C. § 1843(j)(2)(A).

⁴² A commenter requested that the Board hold a public hearing on the proposal. The Board’s regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. 12 CFR 262.3(e). The Board has considered the request in light of all the facts of record. Notice of the proposal was published in relevant newspapers of general circulation on April 19, 2017. The comment period ended on May 19, 2017. 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 comments do not present the commenter’s views adequately or why a hearing would otherwise 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.

Act. The Board's approval is specifically conditioned on compliance by Sterling with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the 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 New York acting pursuant to delegated authority.

By order of the Board of Governors, effective August 30, 2017.

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

The Toronto-Dominion Bank
Toronto, Canada

TD Group US Holdings LLC
Wilmington, Delaware

TD Bank US Holding Company
Cherry Hill, New Jersey

Order Approving the Acquisition of a Savings and Loan Holding Company and Shares in Certain Nonbanking Subsidiaries
FRB Order No. 2017-23 (September 13, 2017)

The Toronto-Dominion Bank (“Toronto-Dominion”), Toronto, Canada, and its subsidiaries, TD Group US Holdings LLC, Wilmington, Delaware, and TD Bank US Holding Company (collectively and together with Toronto-Dominion, “TD”), Cherry Hill, New Jersey, all financial holding companies within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”), have requested the Board’s approval under sections 4(c)(8) and (j) of the BHC Act and section 225.24 of the Board’s Regulation Y¹ to acquire Scottrade Financial Services, Inc. (“Scottrade Financial”), Town and Country, Missouri, and to merge Scottrade Financial’s wholly owned subsidiary, Scottrade Bank, Town and Country, Missouri, a savings association, into TD’s wholly owned subsidiary, TD Bank, National Association (“TD Bank”), Wilmington, Delaware.² In addition, Toronto-Dominion and TD Group US Holdings LLC have requested the Board’s approval under section 163(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”)³ to acquire additional shares of its subsidiary, TD Ameritrade Holding Corporation (“Ameritrade HC”), Omaha, Nebraska, which is engaged in activities described in section 4(k) of the BHC Act.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 11221-11222 (February 21, 2017)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 4 of the BHC Act.

Toronto-Dominion, with consolidated assets of approximately \$923.3 billion, is the second largest bank in Canada by asset size.⁵ Toronto-Dominion provides retail and commercial banking, wealth management, insurance, and investment banking products and services, and operates in North America (including the United States), Europe, and Asia. In the United States, Toronto-Dominion controls TD Bank, with total assets of \$268.2 billion, and TD Bank USA, National Association (“TD Bank USA”), Wilmington, Delaware, with

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

² The merger of Scottrade Bank into TD Bank is subject to approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on May 18, 2017.

³ Pub. L. No. 111-203, 124 Stat. 1376 (2010). This acquisition is part of a related transaction by Ameritrade HC to acquire Scottrade Financial’s broker-dealer subsidiary, Scottrade, Inc., Town and Country, Missouri, under section 4(k) of the BHC Act. 12 U.S.C. § 1843(k).

⁴ 12 CFR 262.3(b).

⁵ Asset data are as of June 30, 2017, and nationwide deposit-ranking data are as of March 31, 2017, unless otherwise noted. Asset and ranking data for Toronto-Dominion on a consolidated basis are as of April 30, 2017, and are based on the exchange rate as of that date.

total assets of \$22.2 billion. Together, the banks have retail banking operations in fifteen states and the District of Columbia.⁶

Scottrade Financial, with consolidated assets of approximately \$24.4 billion, is the 71st largest insured depository organization in the United States. Scottrade Financial controls deposits of approximately \$15.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Scottrade Financial controls Scottrade Bank, with total assets of \$17 billion, which operates in Missouri. Scottrade Financial is the third largest insured depository organization in Missouri, with approximately \$14.7 billion in deposits, which represent 8.84 percent of the total deposits of insured depository institutions in that state.⁷

On consummation of the proposal, TD's U.S. operations would have approximately \$391.8 billion in consolidated assets, which represent 1.8 percent of the total assets of insured depository organizations in the United States.⁸ TD would control total U.S. deposits of approximately \$265.6 billion, which represent 2.1 percent of the total deposits of insured depository institutions in the United States. TD would become the third largest insured depository organization in Missouri with approximately \$14.7 billion in deposits, which represent 8.84 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁹ The Board requires that a savings association acquired by a bank holding company conform its direct and indirect activities to those permissible for a bank holding company under section 4 of the BHC Act. TD has committed that all the activities of Scottrade Financial and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.¹⁰

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Scottrade Financial “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.”¹¹ As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.¹² In acting on a notice to acquire a savings association, the Board also reviews

⁶ TD's subsidiary banks have retail banking operations in Connecticut, Delaware, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and the District of Columbia. In addition, Toronto-Dominion operates a federal branch in New York and a state-licensed agency in Texas.

⁷ State deposit and ranking data are as of June 30, 2016, unless otherwise noted.

⁸ Asset data and nationwide deposit-ranking data for the combined organization are as of March 31, 2017.

⁹ 12 CFR 225.28(b)(4)(ii).

¹⁰ In this instance, TD will immediately merge Scottrade Bank into TD Bank and will not operate the savings association independently.

¹¹ 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Act added “risk to the stability of the United States banking or financial system” to the list of possible adverse effects.

¹² See 12 CFR 225.26. See e.g., *M&T Bank Corporation*, FRB Order 2015-27 (September 30, 2015); *Southside Bancshares, Inc.*, FRB Order 2014-21 (December 10, 2014); *Capital One Financial Corporation*, FRB Order

the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹³

Section 163(b) of the Dodd-Frank Act requires prior Board approval of an acquisition by a bank holding company with assets of \$50 billion or more of shares of any company with assets of at least \$10 billion that is engaged in activities described in section 4(k) of the BHC Act. Toronto-Dominion, TD Group US Holdings LLC, and Ameritrade HC exceed these respective asset thresholds, and Ameritrade HC engages in activities under section 4(k) of the BHC Act. Accordingly, the proposed acquisition of shares of Ameritrade HC by Toronto-Dominion and TD Group US Holdings LLC requires the Board’s prior approval under section 163(b) of the Dodd-Frank Act. In reviewing a notice under section 163(b) of the Dodd-Frank Act, the Board is required to consider the standards listed in section 4(j)(2) of the BHC Act.¹⁴ In addition, section 163(b) requires the Board to consider “the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.”¹⁵

Interstate and Deposit Cap Analyses

The Dodd-Frank Act amended section 4 of the BHC Act¹⁶ to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the applicant and the applicant controls or would control upon consummation of the proposed transaction more than 10 percent of the total amount of deposits of insured depository institutions in the United States. For purposes of the BHC Act, the home state of TD is Delaware and the home state of Scottrade Bank is Missouri.¹⁷ Consummation of the proposal would result in TD controlling 2.1 percent of the total amount of deposits of insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 4(i) of the BHC Act.

Competitive Considerations

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

TD, through its U.S. bank subsidiaries, operates approximately 1,300 retail branch locations in fifteen states and the District of Columbia and also has online operations. Scottrade Bank does not operate any physical retail branches; rather, it offers banking services exclusively through an internet platform, consisting primarily of sweep accounts to customers of Scottrade, Inc. TD Bank, TD Bank USA, and Scottrade Bank control a

2012-2 (February 14, 2012); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); and *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

¹³ 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

¹⁴ Dodd-Frank Act § 163(b)(4), codified at 12 U.S.C. § 5363(b). See *Mitsubishi UFJ Financial Group, Inc.* (Board Order dated June 14, 2011).

¹⁵ Dodd-Frank Act § 163(b)(4), codified at 12 U.S.C. § 5363(b).

¹⁶ Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8).

¹⁷ A bank holding company’s home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on the later of July 1, 1966, or the date on which the company became a bank holding company. 12 U.S.C. § 1841(o)(4)(C). A federal savings association’s home state is the state in which the home office of the savings association is located. 12 U.S.C. §§ 1828(c)(13)(C)(ii)(III) and 1841(o)(4)(E).

relatively small amount of internet deposits when compared to the amount of deposits taken over the internet as a whole. TD Bank and TD Bank USA, on the one hand, and Scottrade Bank, on the other, compete in local banking markets in which TD Bank and TD Bank USA offer retail banking services through their branch locations and throughout the United States through their internet platforms. However, because Scottrade Bank solicits deposits from across the country online, it is unlikely that Scottrade Bank holds a high concentration of internet deposits in any local market, including those in which TD Bank and TD Bank USA have retail branches and internet operations. Based on the size of Scottrade Bank, the large number of internet-based competitors, and the diffuse geographic nature of Scottrade Bank's internet deposits, the proposed transaction would not result in a material increase in concentration in any single market, including any in which TD Bank and TD Bank USA have a physical location. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the Department of Justice ("DOJ") Bank Merger Competitive Review guidelines.

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

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under section 4(j)(2) of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. 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 about the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the public comment on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

TD and its subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. As part of the transaction, Scottrade Bank would merge with and into TD Bank, and a merger subsidiary of Ameritrade HC would merge with and into Scottrade Financial. The holding company merger would be structured as a cash and

share exchange.¹⁸ In addition, TD would exercise preemptive rights to purchase additional shares of Ameritrade HC in order to maintain its current level of ownership interest in Ameritrade HC. The asset quality, earnings, and liquidity of TD are consistent with approval. TD appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization.¹⁹ The Board has reviewed the examination records of TD's U.S. operations, Scottrade Financial, and Scottrade Bank, including assessments of their management, risk-management programs, and operations. In addition, the Board has considered information provided by TD, the supervisory experiences that the Board and other relevant bank supervisory agencies have had with the organizations, and the organizations' records of compliance with applicable banking, consumer, and antimoney-laundering laws, as well as information provided by the commenter.

TD and its subsidiary depository institutions are each considered to be well managed. TD's existing risk-management program and its directors and senior management are considered to be satisfactory. TD's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors. TD has a record of successfully integrating organizations into its operations and risk-management systems after acquisitions.

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

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

Convenience and Needs Considerations

As part of weighing the possible adverse effects of a transaction against its public benefits as required by section 4(j)(2) of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on

¹⁸ As part of the transaction, all of the outstanding shares of Scottrade Financial would be exchanged for no more than 4.95 percent of Ameritrade HC's pro forma outstanding shares and \$3.0 billion in cash. TD has the financial resources to effect the proposed transaction.

¹⁹ The Board has previously determined that Toronto-Dominion is subject to comprehensive consolidated supervision by the Office of the Superintendent of Financial Institutions in Canada. *See The Toronto-Dominion Bank* (Board Order dated July 22, 2010).

²⁰ 12 U.S.C. § 1843(j)(2).

the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²¹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods in evaluating bank expansionary proposals.²²

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of TD Bank, TD Bank USA, and Scottrade Bank; the fair lending and compliance records of each bank; the supervisory views of the OCC and Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by TD; and the public comment received on the proposal.

Public Comment Regarding the Proposal

A commenter objected to the proposal, asserting that TD Bank has made inadequate home purchase and refinance loans to LMI and minority borrowers. Based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA")²³, the commenter argued that TD Bank did not adequately serve minority or LMI borrowers in New York City. The commenter also argued that TD Bank has made inadequate investments in multifamily residential real estate, community development loans and investments, and charitable gifts to neighborhood-based organizations. The commenter asserted that TD Bank should make investments in residential real estate other than through low-income housing tax credits. The commenter also alleged that TD Bank does not offer products that are affordable for LMI borrowers because its low-cost checking account product has a fee that cannot be waived, and another checking account product has a fee that can only be waived if a customer maintains a minimum balance that the commenter believes is too high. Finally, the commenter stated that TD Bank should accept New York City's municipal ID as a primary form of identification for customers seeking to obtain banking products.²⁴

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

²³ 12 U.S.C. § 2801 *et seq.*

²⁴ The commenter also stated that the Board should not approve the proposal until TD Bank submits a CRA plan with prospective commitments for community investments and lending activity. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. *See, e.g., United Bancshares, Inc.*, FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

Business of the Involved Institutions and Response to the Comment

TD, TD Bank, and TD Bank USA offer a broad range of financial services to consumers and businesses. Through their branch network, TD Bank and TD Bank USA offer a variety of banking products to their customers, including real-estate, commercial and consumer loans, and deposit products and services. In addition to traditional deposit and loan products, TD Bank also offers trust and financial advisory services to personal, business, corporate, and institutional clients.

Scottrade Bank offers online retail banking products and services, as well as commercial lending and commercial equipment financing. Scottrade Bank primarily provides deposit account products and services to customers of Scottrade Inc., including sweep accounts.

In response to the comment, TD asserts that the records of TD Bank and TD Bank USA in meeting the convenience and needs of the communities they serve are consistent with approval.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.²⁵

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.²⁶ An institution's most recent CRA performance evaluation is a particularly important consideration in the notice process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the company'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

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

²⁶ 12 U.S.C. § 2906.

loans to low-, moderate-, middle-, and upper-income individuals;²⁷ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.²⁸ The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.²⁹ This evaluation involves an assessment of (1) the number and amounts of community development loans (including originations and purchases of loans, and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services; (2) the use of innovative or complex qualified investments, community development loans, or community development services, and the extent to which the investments are not routinely provided by private investors; and (3) the bank's responsiveness to credit and community development needs.³⁰ Based on its activities, Scottrade Bank is considered to be a wholesale bank.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³¹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of TD Bank

TD Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of December 31, 2013 ("TD Bank Evaluation").³² TD Bank received "High Satisfactory" ratings for the Lending and Service tests and an "Outstanding" rating for the Investment Test. Examiners found that TD Bank provided a relatively high level of community development services.

Examiners found that TD Bank's overall lending activity was excellent. Examiners noted that the distribution by TD Bank of loans to geographies and borrowers of different income levels was adequate. Examiners found that TD Bank had a good level of community development lending that had a positive impact on TD Bank's overall lending.

²⁷ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

²⁸ 12 CFR 228.25. A wholesale bank is one that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

²⁹ 12 CFR 228.25(c).

³⁰ *Id.*

³¹ Other data relevant to credit decisions could include credit histories, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners may analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³² The TD Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and the CRA from January 1, 2011, through December 31, 2013. The evaluation period for community development loans, investments, and services was from January 1, 2012, through December 31, 2013. The TD Bank Evaluation covered TD Bank's 72 AAs located in fifteen states and six multistate metropolitan areas ("MMAs"). A full-scope review was conducted in one office of each state and MMA. A limited-scope review was conducted in the remaining AAs.

TD Bank received a “High Satisfactory” rating for the Lending Test in the New York-Northern New Jersey-Long Island MMA (“New York MMA”), an area of concern for the commenter. Examiners conducted a full-scope review in the New York MMA and noted that TD Bank had adequate distribution of loans to individuals and businesses of different income levels. Examiners noted that TD Bank had good performance for small loans to businesses of different sizes, but poor performance for home mortgage loans by income level of the borrower. Examiners found that TD Bank’s level of community development lending in the New York MMA was excellent and flexible, which positively impacted the bank’s Lending Test performance.

Examiners found that TD Bank had an excellent level of qualified investments that was responsive to the needs of its communities. In the New York MMA, TD Bank received an “Outstanding” rating for the Investment Test. Examiners found that TD Bank made extensive use of innovative or complex investments to support community development initiatives, particularly for affordable housing development. Examiners also noted that TD Bank’s responsiveness to the investment needs of the communities in the New York MMA was excellent. Examiners found that a substantial majority of TD Bank’s investments were in low-income housing tax credit projects, which examiners stated were a primary need in the bank’s AAs.

Examiners found that TD Bank had accessible office locations and a relatively high level of community development services. In the New York MMA, examiners assigned TD Bank a “High Satisfactory” rating for the Service Test. Examiners noted that TD Bank provided a good level of community development services, including first-time homebuyer seminars and financial literacy classes for students in community schools and economic and affordable housing organizations. Examiners found that TD Bank’s delivery systems were accessible to all geographies, all census tracts, and individuals of different income levels. While examiners noted that the distribution of branches and full-service ATMs in LMI geographies was below what would be consistent with the number of LMI borrowers in the New York MMA, examiners found that TD Bank’s 79 branches provided good access to LMI individuals. Examiners also found that TD Bank made adequate use of alternative delivery systems, including ATMs, online banking, and free telephone banking. Examiners found that TD Bank’s record of opening and closing branch offices did not adversely affect, but instead significantly improved, the accessibility of its delivery systems to LMI individuals.

TD Bank’s Activities since the TD Bank Evaluation

TD states that, since the TD Bank Evaluation, TD Bank has taken significant steps to continue and improve its CRA performance. Specifically, TD Bank has initiated two mortgage lending programs, the TD Right Step affordable mortgage loan product and the FannieMae HomeReady affordable mortgage program. The TD Right Step mortgage product provides borrowers with flexible financing options, including down payments as low as 3 percent without a requirement to purchase private mortgage insurance. This mortgage product also has simplified underwriting and appraisal processes that are more consumer friendly than traditional processes. Since beginning the program in 2014, TD Bank has closed over 3,100 loans through the TD Right Step program. TD Bank also began participating in Fannie Mae’s HomeReady affordable mortgage program, which provides flexible financing options to LMI borrowers. Since joining the program in late 2016, TD Bank has closed 113 HomeReady loans.

CRA Performance of TD Bank USA

TD Bank USA was assigned an overall CRA rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of March 31, 2014 (“TD Bank USA Evaluation”). The TD Bank USA Evaluation was conducted pursuant to an OCC-approved CRA strategic plan, which specified measurable goals for meeting the lending, investment, and service needs of the bank’s assessment area.³³ The TD Bank USA Evaluation included a review of the bank’s performance toward meeting the strategic plan goals in the defined assessment area of the Portland-South Portland-Biddeford, Maine, MSA for 2011 and 2012.³⁴

Examiners found that TD Bank USA substantially met or exceeded all of its strategic plan goals in its AA. In addition, examiners noted that the bank supported community-based organizations in New York City with capital lines of credit. Examiners noted that the bank invested in low-income housing tax credits to construct low-income housing for the elderly, and made deposits or donated certificates of deposits to low-income and minority-owned credit unions. Examiners also noted that TD Bank USA provided grants and donations to organizations dedicated to providing affordable housing, services for LMI individuals, and local economic development.

CRA Performance of Scottrade Bank

Scottrade Bank was assigned an overall CRA rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of April 1, 2013 (“Scottrade Bank Evaluation”).³⁵

Examiners found that Scottrade Bank’s lending levels were adequate in light of the bank’s capacity and the lending opportunities available to it. Examiners noted that Scottrade Bank made complex community development loans, which aided in the development of affordable housing. Examiners also noted that Scottrade Bank made additional community development loans outside of its AA, which favorably impacted its CRA evaluation.

Examiners found that Scottrade Bank provided an adequate level of investments to meet community needs, most of which helped to provide affordable housing and neighborhood revitalization. Examiners noted that Scottrade Bank also invested in a mortgage loan pool that only lent to LMI borrowers. Examiners found that Scottrade Bank made charitable donations that promoted affordable housing and provided other services to LMI individuals. Examiners also noted that Scottrade Bank made investments outside of its AA to promote affordable housing, which favorably impacted its CRA evaluation.

Examiners found that Scottrade Bank provided an adequate level of services in its AA. Examiners noted that the bank’s employees volunteered with several organizations that provided services to LMI individuals.

³³ Under the federal banking agencies’ CRA regulations, the appropriate federal banking agency will assess a bank’s record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. *See* 12 CFR 25.27. The OCC approved TD Bank USA’s strategic plan in August 2010.

³⁴ The bank’s strategic plan also permits the bank to respond to the needs of communities in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, and New York.

³⁵ The Scottrade Bank Evaluation was conducted using Wholesale or Limited Purpose Bank Examination Procedures. Examiners reviewed Scottrade Bank’s community development activities both inside and outside of its sole AA from July 8, 2008, through April 1, 2013. The bank’s sole AA includes St. Louis County and St. Louis City County, both in Missouri.

Views of the OCC and CFPB

In its review of the proposal, the Board consulted with the OCC regarding TD Bank's CRA, consumer compliance, and fair lending records, as well as with the CFPB regarding TD Bank's record of consumer compliance. The OCC reviewed the bank merger underlying this proposal, including the comment received by the Board.

The Board has considered the results of the most recent consumer compliance examination of TD Bank conducted by OCC examiners. The Board also has considered the results of the OCC's most recent examination of TD Bank's compliance with the Equal Credit Opportunity Act³⁶ and the Fair Housing Act.³⁷ In addition, the Board has considered the results of the CFPB's consumer compliance examination of TD Bank.

The Board has taken the consultations with the OCC and the CFPB, as well as the information discussed above, into account in evaluating this proposal, including in considering whether TD has the experience and resources to ensure that the organization effectively implements policies and programs that would allow the combined organization to serve effectively the credit needs of all the communities within the firm's AAs.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. TD represents that, as a result of the proposal, existing customers of Scottrade Bank would have access to additional or expanded services, including access to retail branches and ATM locations in its market areas. Upon consummation of the bank merger, TD Bank would offer the former depositors of Scottrade Bank its products and services, including a debit card, free ATM withdrawals, free online bill payment, and a sweep deposit program comparable to that currently offered by Scottrade Bank. TD also represents that deposit customers of Scottrade Bank, many of whom use the brokerage and wealth management services of Scottrade Financial's other subsidiaries, would have access to the enhanced product selection and trading platform of Ameritrade HC and its subsidiaries, including investor education programs, mobile trading technology, more diverse investment products including derivatives and foreign exchange, and greater investment guidance and advice. TD represents that the combined company's larger capital and asset base would allow it to be a more effective competitor in the investment advisory and securities brokerage markets and to continue to offer competitive prices for its services. TD also represents that, on balance, no significant reductions in products or services would be expected as a result of the proposal.³⁸

Conclusion on Convenience and Needs Considerations

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

³⁶ 15 U.S.C. § 1692 *et seq.*

³⁷ 42 U.S.C. § 3601 *et seq.*

³⁸ TD represents that Ameritrade HC and its subsidiaries would discontinue all but a few of the proprietary products currently offered by Scottrade Financial. However, TD represents that the products of Ameritrade HC and its subsidiaries would provide investors with improved quality and investment options.

The Board expects TD to ensure that its subsidiary banks implement effective consumer compliance and risk-management programs following consummation of the proposal that are commensurate with each bank's size, complexity, and nature and scope of operations. The Board will continue to monitor and evaluate these efforts through its ongoing supervision of TD Group U.S. Holdings LLC and TD Bank US Holding Company, as well as through consultations with the OCC and CFPB.

Financial Stability

The Dodd-Frank Act added “risk to the stability of the United States banking or financial system” to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering a proposal under section 4(j) of the BHC Act and requires the Board to consider “the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy” in considering a notice submitted pursuant to section 163(b) of the Dodd-Frank Act.³⁹

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system or the U.S. economy and risks to global or United States financial stability. Both the acquirer and the target are engaged in retail banking, investment advisory, wealth management, and securities brokerage activities. TD has, and as a result of the proposal, would continue to have, small-to-moderate market shares in these products and services on a nationwide basis. The acquisition would not have meaningful effects on the cross-border activities of the acquirer; would not lead to changes in the institution's organizational structure, complexity, or unique characteristics that would complicate its resolution; nor would it pose a significant risk to the banking or financial system, economy, or financial stability, in the event of financial distress. In addition, substitute providers would be readily available for the critical financial services provided by the *pro forma* institution, and the acquisition would not heighten its interconnectedness with other firms or markets in ways that would significantly raise risks to the financial system or economy or to financial stability in the event of financial distress.

³⁹ Dodd-Frank Act §§ 163(b)(4), 604(e)(1) and (f), codified at 12 U.S.C. 5363(b)(4) and 12 U.S.C. §§1843(j)(2)(A) and 1828(c)(5), respectively.

⁴⁰ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴¹ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

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

Additional Public Benefits of the Proposal

As noted, in connection with a notice under section 4(c)(8) of the BHC Act and notice under section 163(b) of the Dodd Frank Act, section 4(j)(2) of the BHC Act requires the Board 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 interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”⁴² As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Scottrade Financial and its subsidiaries. In addition, the acquisitions would ensure continuity and strength of service to these customers.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined 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 and other applicable statutes. The Board’s approval is specifically conditioned on compliance by TD with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on 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.

By order of the Board of Governors, effective September 13, 2017.

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

⁴² 12 U.S.C. § 1843(j)(2)(A).

Orders Issued Under Bank Merger Act

Veritex Holdings, Inc.
Dallas, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-18 (July 6, 2017)

Veritex Holdings, Inc. (“Veritex Holdings”), Dallas, Texas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Sovereign Bancshares, Inc. (“Sovereign Bancshares”), and thereby indirectly acquire Sovereign Bank, both of Dallas, Texas.

In addition, Veritex Holdings’ subsidiary state member bank, Veritex Community Bank (“Veritex Bank”), Dallas, Texas, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Sovereign Bank, with Veritex Bank as the surviving entity.³ Veritex Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Sovereign Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 8425 (January 25, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Veritex Holdings, with consolidated assets of approximately \$1.4 billion, is the 524th largest insured depository organization in the United States.⁶ Veritex Holdings controls approximately \$1.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Veritex Holdings controls Veritex Bank, which operates only in Texas. Veritex Holdings is the 64th largest insured depository organization in Texas, controlling deposits of approximately \$1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁸

Sovereign Bancshares, with consolidated assets of approximately \$1.1 billion, is the 670th largest insured depository organization in the United States, controlling approximately \$857.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sovereign Bancshares controls Sovereign Bank, which operates only in Texas. Sovereign Bancshares is

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of December 31, 2016, unless otherwise noted.

⁷ In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

⁸ State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

the 80th largest insured depository organization in Texas, controlling deposits of approximately \$814.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Veritex Holdings would become the 338th largest insured depository organization in the United States, with consolidated assets of approximately \$2.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Veritex Holdings would control consolidated deposits of approximately \$2.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Veritex Holdings would become the 38th largest insured depository organization in Texas, controlling deposits representing less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁹ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

Veritex Holdings and Sovereign Bancshares have subsidiary depository institutions that compete directly in the Dallas, Texas, banking market (“Dallas market”).¹¹ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market (“market deposits”) that Veritex Holdings would control;¹² 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”);¹³ and other characteristics of the market.

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

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

¹¹ The Dallas market includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie and Ferris in Ellis County, all in Texas.

¹² Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) 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).

¹³ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Dallas market. On consummation of the proposal, the Dallas market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.¹⁴

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁵ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete 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.

Veritex Holdings and Sovereign Bancshares are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with a subsequent merger of Veritex Bank and Sovereign Bank.¹⁶ The asset quality, earnings, and liquidity of both Veritex Bank

¹⁴ Veritex Holdings operates the 23rd largest depository institution in the Dallas market, controlling approximately \$1.0 billion in deposits, which represent less than 1 percent of market deposits. Sovereign Bancshares operates the 28th largest depository institution in the same market, controlling approximately \$539.7 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Veritex Holdings would become the 16th largest depository organization in the market, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of market deposits. The HHI for the Dallas market would increase by 1 point to 1792, and 121 competitors would remain in the market.

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

¹⁶ To effect the holding company merger, a wholly owned subsidiary of Veritex Holdings formed to facilitate the transaction would merge with Sovereign Bancshares, with Sovereign Bancshares as the surviving entity, and immediately thereafter Sovereign Bancshares would merge with Veritex Holdings, with Veritex Holdings as the surviving entity. Upon consummation of that merger, each share of Sovereign Bancshares common stock would be entitled to receive a portion of the aggregate merger consideration, which would consist of Veritex Holdings common stock and cash. Sovereign Bank would then merge with and into Veritex Bank, with Veritex Bank as the surviving entity. Veritex Holdings has the financial resources to effect the transaction.

and Sovereign Bank are consistent with approval, and Veritex Holdings appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

The Board also has considered Veritex Holdings' plans for implementing the proposal. Veritex Holdings has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Veritex Holdings would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Veritex Holdings' management has the experience and resources to operate the combined organization in a safe and sound manner, and Veritex Holdings plans to integrate Sovereign Bancshares' existing management and personnel in a manner that augments Veritex Holdings' management.¹⁷

Based on all the facts of record, including the supervisory records of Veritex Holdings, Sovereign Bancshares, and their subsidiary banks, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Veritex Holdings and Sovereign Bancshares in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the

¹⁷ On consummation, Sovereign Bancshares' president and chief executive officer, as well as the chairman of its board of directors, will be appointed to the boards of directors of Veritex Holdings and Veritex Bank. Additionally, one of these individuals is expected to be appointed vice chairman of the board of directors of Veritex Holdings.

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

relevant depository institutions under the Community Reinvestment Act (“CRA”).¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁰ and requires the appropriate federal financial supervisory agency to assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²¹

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

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 Veritex Bank and Sovereign Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Veritex Holdings; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from one commenter opposing the proposal. The commenter alleged that Veritex Bank discriminates against African Americans and “redlines” African American neighborhoods, particularly in the Dallas and Houston areas,²² both in Texas, with respect to its branching, marketing, and lending activities.²³ The commenter also alleged that Veritex Bank has designated its CRA assessment area in a manner that excludes majority African American neighborhoods in Dallas. In addition, the commenter alleged that Sovereign Bank also discriminates against African Americans and redlines African American neighborhoods.

Businesses of the Involved Institutions and Response to Comments

Veritex Holdings and Veritex Bank offer a range of financial products and services to individual customers and businesses. Veritex Bank is a full-service retail bank offering agricultural, commercial, home purchase, home improvement, home equity, and vehicle loans. Through its network of 11 branches, Veritex Bank offers a wide range of deposit products including various checking accounts, savings accounts, certificates of deposit, individual retirement accounts, money market accounts, and NOW accounts. Veritex Bank also provides automated teller machines, debit cards, and internet banking.

Sovereign Bancshares and Sovereign Bank offer deposit and loan products and specialize in commercial banking activities. Sovereign Bank offers a range of financial products and

¹⁹ 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

²⁰ 12 U.S.C. § 2901(b).

²¹ 12 U.S.C. § 2903.

²² Veritex currently has no branch locations in Houston.

²³ 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>.

services to individual customers and businesses, including business loans, commercial real estate lending, and consumer deposit products.

Veritex Holdings denies the commenter's allegations of discriminatory lending and redlining with respect to the branching, marketing, and lending activities of Veritex Bank. Veritex Holdings asserts that Veritex Bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations, and asserts that Veritex Bank designated the entirety of two counties in the Dallas area as its CRA assessment area,²⁴ in part to ensure that no LMI or high minority census tracts were excluded or neglected. Veritex Holdings further asserts that Veritex Bank's management is committed to ensuring that no geographic areas are excluded by branch location decisions. With respect to fair lending, Veritex Holdings asserts that the bank has implemented policies and procedures to ensure fair lending compliance, including an equal credit opportunity policy and a fair lending policy, among others. Veritex Holdings represents that Veritex Bank monitors and reviews loan policies and practices for the purpose of measuring compliance with fair lending laws and equal credit opportunity requirements, and that this monitoring includes internal and external audits, as well as training programs.

In response to the commenter's criticism that Veritex Bank has no advertising or marketing efforts directed at African American communities, Veritex Holdings asserts that Veritex Bank has directed advertising and marketing efforts towards individuals and small businesses in areas typically underserved by banks, including African American communities. Veritex Holdings represents that these marketing efforts include partnerships with various community organizations, including one that facilitates micro lending to low- and moderate-income individuals.

The commenter also noted that Sovereign Bank discriminates against African Americans and redlines in African American neighborhoods. Veritex Holdings notes that as part of its community development activities, a majority of Sovereign Bank's community development loans have been to borrowers in predominantly minority census tracts. Veritex Holdings represents that as part of Sovereign Bank's CRA efforts, it has made qualified donations to organizations that help to support financial literacy and money management to individuals in census tracts that are over 50 percent minority, as well as to organizations that focus on housing, ending homelessness, and providing other social services targeted to LMI individuals in the Dallas metropolitan area. Further, Veritex Holdings represents that, through Sovereign Bank branch locations, bank personnel provide community development services to organizations located in predominantly minority census tracts and meet with different community groups, including an alliance for the homeless, which helps the bank better understand the needs of the communities it serves. Veritex Holdings also represents that Sovereign Bank has implemented processes to comply with anti-discrimination requirements, including the establishment of a fair lending committee that reviews, among other things, high-rate loans and consumer loans with origination fees.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to the information provided by the public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views

²⁴ These counties, the Dallas and Collin counties, are defined below.

provided by the appropriate federal supervisors.²⁵ In this case, the Board considered the views of its supervisory staff and of examiners from the Federal Reserve Bank of Dallas (“Reserve Bank”) and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁶ 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.²⁷

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution’s available Home Mortgage Disclosure Act (“HMDA”)²⁸ data, automated loan reports, and other reports generated by the institution to assess the institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on the institution’s loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance.²⁹ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments; the extent to which they provide community development services; and their responsiveness to community development lending, investment, and service needs.³⁰

CRA Performance of Veritex Bank

Veritex Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 (“Veritex Bank Evaluation”).³¹ The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test. The Veritex Bank Evaluation included full-scope evaluations of Dallas and Collin counties in the Dallas-Plano-Irving Metropolitan Division, an area of concern to the commenter.

Examiners concluded that the bank’s performance demonstrated a reasonable responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of

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

²⁶ 12 U.S.C. § 2906.

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁸ 12 U.S.C. § 2801 *et seq.*

²⁹ See 12 CFR 228.26(b).

³⁰ See 12 CFR 228.26(c).

³¹ The Veritex Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Veritex Bank in 2014 and 2015 and small business loans originated by the bank between April 1, 2016, and September 30, 2016. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from November 12, 2013, through January 23, 2017.

the bank's HMDA and small business loans were originated inside its assessment area. Examiners found that the bank's net loan-to-deposit ratio was considered reasonable, given the bank's size and financial condition, the credit needs of the assessment area, and the competitive local banking environment.

Examiners also found that the bank's distribution of lending to borrowers reflected a reasonable penetration among individuals of different income levels (including LMI borrowers) and that the geographic dispersion of the bank's lending was reasonable given the performance context. Examiners determined that the distribution of HMDA loans by borrower income level was reasonable given the high level of competition in the assessment area and low volume of loans originated to LMI borrowers by the aggregate lenders. Loans were generally made in close proximity to the bank's branches, and there were no conspicuous gaps or anomalies in the lending patterns. The distribution of the remainder of bank lending in middle- and upper-income geographies did not affect the conclusions about the bank's performance considering its lending in LMI geographies. With respect to small business lending, examiners found geographic distribution to be reasonable.

Examiners also determined that Veritex Bank's responsiveness to community development needs was adequate considering the bank's capacity and its primary focus as a commercial lender. Examiners noted that the bank applied its community development resources strategically to meet community needs, primarily through qualified loans and community services targeted to LMI individuals in its community, and that the bank provided community development services through its branches in LMI areas. Examiners found that the bank provided a high level of retail services in its assessment area. Specifically, examiners found Veritex Bank's delivery systems to be accessible to geographies and individuals of different income levels in its assessment area. Examiners also noted that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals, and that its services did not vary in a way that inconvenienced its assessment area, particularly LMI geographies and individuals.

CRA Performance of Sovereign Bank

Sovereign Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2015 ("Sovereign Bank Evaluation").³² Sovereign Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test. Although Sovereign Bank's overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank's records in the Dallas, Texas MSA AA due to the higher volume of loans in that area.

For the Lending Test, examiners evaluated Sovereign Bank's small business loans. Based on this evaluation, examiners found that Sovereign Bank's loan-to-deposit ratio reflected reasonable responsiveness to credit needs in its assessment areas given its size and financial

³² The Sovereign Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business loans originated by the bank from January 1, 2014, through December 31, 2014. Because commercial loans comprised approximately 49 percent of the bank's loan portfolio and its primary product line, examiners focused the Lending Test on small business loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from June 19, 2012, through March 30, 2015.

The Sovereign Bank Evaluation included a full-scope review of performance in the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area Assessment Area ("Dallas, Texas MSA AA"); and a limited-scope review of performance in the Austin-Round Rock, Texas MSA assessment area and the Houston-The Woodlands-Sugar Land, Texas MSA assessment area.

condition. Examiners found that Sovereign Bank originated a majority of its lending within the bank's assessment areas. Specifically, examiners noted that Sovereign Bank originated a majority of its small business loans by number and dollar volume inside of its assessment areas. Examiners found that Sovereign Bank displayed a reasonable level of penetration regarding its distribution of loans based on borrower profile and that the bank's record of lending to businesses of different sizes reflected a reasonable performance. Examiners also found that Sovereign Bank demonstrated a reasonable record of geographically distributing its loans throughout the assessment areas. Examiners found that the bank's lending in moderate-income areas reflected reasonable performance, but lending in low-income census tracts demonstrated poor performance. However, examiners noted that the geographic distribution of the bank's small business loans reflected a reasonable record of lending within the assessment areas when performance context factors that mitigate the bank's small business loan originations in LMI census tracts were considered. These performance context factors include (1) the bank's concentrated marketing efforts in LMI areas to increase small business loan volume through its Small Business Administration Loan Programs, such as by mailing out letters advertising the program in each assessment area, and (2) the bank's targeting of businesses, and specifically those with gross annual revenues of less than \$1 million, in the bank's low-income census tracts. Overall, examiners noted that, considering efforts made to increase small business lending in LMI areas and the heavy concentration of bank competition in the Dallas MSA AA, the bank's geographic distribution of small business loans reflected reasonable dispersion.

With respect to community development, examiners considered Sovereign Bank's community development loans, community development investments, and community development services. Examiners found that Sovereign Bank demonstrated an excellent record regarding its community development lending. Examiners also found that Sovereign Bank exhibited an adequate record regarding its community development investments and donations. Specifically, examiners noted that the bank had adequate responsiveness to community development needs combined with an adequate level regarding the number and dollar volume of community development investments and donations. Examiners found that Sovereign Bank established an excellent record of providing community development services to LMI individuals through its contribution of financial expertise and involvement in activities directed at LMI individuals and families. Examiners further noted that Sovereign Bank provided a range of banking products and services to meet the needs of consumer and commercial customers and that its branch offices and delivery systems were readily accessible to LMI borrowers.

Sovereign Bank's Efforts since the Sovereign Bank Evaluation

Veritex Holdings represents that since the Sovereign Bank Evaluation, Sovereign Bank has worked to continue to serve its communities through its small business lending, community service activities, outreach efforts, investments, and donations. Specifically, Veritex Holdings represents that since its last evaluation, Sovereign Bank has continued to provide for community development services through non-profit organizations to LMI individuals and that the bank's employees have continued to serve its communities through work on the boards of directors of non-profit organizations. Veritex Holdings represents that Sovereign Bank's CRA committee meets with different community groups, which helps the bank understand the needs of the communities it serves.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of Veritex Bank conducted by Reserve Bank examiners, which included a review of the compliance management program and the banks' compliance with consumer protec-

tion laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Veritex Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls.

The Board also has considered the results of a recent consumer compliance examination of Sovereign Bank conducted by FDIC examiners, which included a review of the bank's compliance management system and the bank's compliance with consumer protection laws, including fair lending laws and regulations.

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. Veritex Holdings represents that it has no plans to discontinue any significant product or service currently offered by Veritex Bank or Sovereign Bank. Specifically, Veritex Bank represents that it will continue to offer customers a range of deposit and credit products and services that benefit the communities in which Veritex Bank and Sovereign Bank each presently conduct business, including those credit products and services that fulfill the needs of LMI demographics. Veritex Bank represents that, following the proposed transaction, customers of Sovereign Bank would have access to a complement of products and services that are more expansive than those currently available to Sovereign Bank customers, including residential mortgage loan products, and that Sovereign Bank customers would also have increased access to Veritex Bank's offices by telephone and online applications, which may increase access to banking services. In addition, Veritex Bank asserts that customers of both institutions would benefit from a more expansive branch and ATM network. Following the proposed transaction, Veritex Bank represents that it will continue to provide a level of service consistent with Veritex Bank's current CRA performance.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Veritex Bank, public comments 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 concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."³³

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

³³ Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

cial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁴ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁵

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. 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.³⁷ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Establishment of Branches

Veritex Bank has applied under section 9 of the FRA to establish branches at the current locations of Sovereign Bank.³⁸ The Board has assessed the factors it is required to consider

³⁴ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁶ 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.

³⁷ Veritex Holdings primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, and treasury management. Sovereign Bancshares primarily offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Veritex Holdings has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

³⁸ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of Veritex Bank's branches would be permissible under applicable state law. See Tex. Fin. Code §§ 32.203; 32.301(c).

when reviewing an application under that section.³⁹ Specifically, the Board has considered Veritex 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.⁴⁰ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁴¹ 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. Approval of this proposal is specifically conditioned on compliance by Veritex Holdings and Veritex Bank with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective July 6, 2017.

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

Appendix

Branches to Be Established by Veritex Bank

1. 600 West 5th Street, Austin, Texas 78701
2. 150 South Bell Boulevard, Cedar Park, Texas 78613
3. 17950 Preston Road, Suite 100, Dallas, Texas 75252
4. 6060 Sherry Lane, Dallas, Texas 75225
5. 7255 North State Highway 161, Irving, Texas 75039

³⁹ 12 U.S.C. § 322; 12 CFR 208.6.

⁴⁰ Upon consummation of the proposed transaction, Veritex Bank's investments in bank premises would remain within legal requirements, under 12 CFR 208.21.

⁴¹ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board 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. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the Federal Register on January 25, 2017, and in the relevant newspaper of general circulation (*The Dallas Morning News*) on January 13, January 20, and February 10, 2017. The comment period ended on February 12, 2017. 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.

6. 3800 Matlock Road, Arlington, Texas, 76015
7. 2438 East Southlake Boulevard, Southlake, Texas 76092
8. 2800 West 7th Street, Fort Worth, Texas 76107
9. 5111 San Felipe, Houston, Texas 77056
10. 777 Post Oak Boulevard, Suite 700, Houston, Texas 77056

Synovus Bank Columbus, Georgia

Order Approving the Acquisition of Assets and Assumption of Liabilities *FRB Order No. 2017–22 (September 6, 2017)*

Synovus Bank, the state member bank subsidiary of Synovus Financial Corp. (“Synovus Financial”), both of Columbus, Georgia, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)¹ to acquire substantially all the assets of, and assume the deposit liabilities of, World’s Foremost Bank, a state nonmember credit-card bank subsidiary of Cabela’s Incorporated (“Cabela’s”), both of Sidney, Nebraska.

Under the proposal, Synovus Bank would assume all of the deposits of World’s Foremost Bank (totaling approximately \$1.2 billion), as well as approximately \$4.1 billion in nondeposit liabilities. Synovus Bank also would acquire substantially all of the assets of World’s Foremost Bank (equaling approximately \$5.7 billion), including credit-card loans and related assets.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.³ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the Bank Merger Act.

Synovus Financial, with consolidated assets of approximately \$30.7 billion, is the 59th largest depository organization in the United States by assets.⁴ Synovus Financial is the 50th largest insured depository organization in the United States by deposits, controlling deposits through Synovus Bank of approximately \$25.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Synovus Bank has offices in Alabama, Florida, Georgia, South Carolina, and Tennessee.

World’s Foremost Bank, with total assets of approximately \$5.7 billion, operates a single banking office in Sidney, Nebraska. The bank is a credit-card bank and, as such, engages only in a limited set of lending and deposit-taking activities.⁵ World’s Foremost Bank is the 11th largest depository organization in Nebraska, controlling deposits of approximately \$1.2 billion, which represent 1.9 percent of the total amount of deposits of insured depository institutions in Nebraska.

On consummation of the proposal, Synovus Financial would control approximately \$26.3 billion in deposits through Synovus Bank. Synovus Financial would become the 53rd

¹ 12 U.S.C. § 1828(c).

² In a transaction not subject to Board approval, Synovus Bank proposes to sell to Capital One Bank (USA), National Association (“CapitalOne Bank”), Glen Allen, Virginia, all of the assets acquired from World’s Foremost Bank. Capital One Bank also would assume approximately \$4.1 billion in nondeposit liabilities of World’s Foremost Bank.

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

⁴ National deposit, ranking, and market-share data are as of March 31, 2017. State deposit ranking data are as of June 30, 2016. Total assets are as of June 30, 2017. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁵ As a credit-card bank, World’s Foremost Bank engages only in credit-card operations, does not accept demand deposits, does not accept deposits of less than \$100,000, and otherwise conforms to the requirements of section 2(c)(2)(F) of the Bank Holding Company Act of 1956 (“BHC Act”). 12 U.S.C. § 1841(c)(2)(F). World’s Foremost Bank is not a “bank” for purposes of the BHC Act, and Cabela’s is not a bank holding company.

largest insured depository organization in the United States by assets and would become the 49th largest insured depository organization in the United States by deposits.⁶

For purposes of section 44 of the FDI Act and the Bank Merger Act, the home state of Synovus Bank is Georgia, and the home state of World's Foremost Bank is Nebraska.⁷ Synovus Bank is well capitalized and well managed under applicable law and has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA"). The proposed acquisition of deposits and assets of World's Foremost Bank would not be prohibited by the law of any state in which World's Foremost Bank is located.

Interstate and Deposit Cap Analyses

Section 44 of the Federal Deposit Insurance Act ("FDI Act") generally provides that, if certain conditions are met, the Board may approve an application by a bank to engage in an interstate transaction with a bank that has a different home state without regard to whether the transaction would otherwise be prohibited under state law.⁸ The Board may not approve an application under this section that would permit an out-of-state bank to engage in an interstate transaction with a bank in a host state if the bank to be acquired has not been in existence for the lesser of the state statutory minimum period of time or five years.⁹ In addition, the Board may not approve an interstate application under this section if the 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 or, in certain circumstances, the 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 branches.¹⁰ The Bank Merger Act includes a prohibition on approval of interstate transactions where the applicant controls, or, upon consummation of the proposed transaction, would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.¹¹

For purposes of section 44 of the FDI Act and the Bank Merger Act, the home state of Synovus Bank is Georgia, and the home state of World's Foremost Bank is Nebraska.¹² Synovus Bank is well capitalized and well managed under applicable law and has a "Satisfactory" rating under the Community Reinvestment Act of 1977 ("CRA"). The proposed acquisition of deposits and assets of World's Foremost Bank would not be prohibited by the law of any state in which World's Foremost Bank is located.

On consummation of the proposed transaction, Synovus Bank would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. The Board has considered all other requirements under section 44 of the FDI Act and the Bank Merger Act. In light of all the facts of the record, the Board may approve the proposal under section 44 of the FDI Act and the interstate merger provisions of the Bank Merger Act.

⁶ For purposes of these rankings, the Board assumes that Synovus Bank would retain all of the assets and liabilities that would be acquired through the proposal. This approach is discussed further below.

⁷ A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §§1828(c)(13)(C)(ii) and 1831u(g)(4). Although World's Foremost Bank is not considered to be a bank for purposes of the BHC Act, it is a bank for purposes of section 44 of the FDI Act and the Bank Merger Act.

⁸ 12 U.S.C. § 1831u(a)(1).

⁹ 12 U.S.C. § 1831u(a)(5).

¹⁰ 12 U.S.C. § 1831u(b)(2).

¹¹ 12 U.S.C. §1828(c)(13).

¹² A state bank's home state is the state by which the bank is chartered. 12 U.S.C. §§1828(c)(13)(C)(ii) and 1831u(g)(4). Although World's Foremost Bank is not considered to be a bank for purposes of the BHC Act, it is a bank for purposes of section 44 of the FDI Act and the Bank Merger Act.

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

Synovus Bank and World's Foremost Bank do not compete directly in any local retail banking market. The Department of Justice has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the existing and proposed institutions.¹⁵ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations, as well as information regarding the financial condition of the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board considered this proposal with and without regard to the proposed sale of the assets and liabilities of World's Foremost Bank to Capital One Bank by Synovus Bank.¹⁶ Synovus Bank and World's Foremost Bank are well capitalized, and Synovus Bank would remain so on consummation of the proposal, including if it were to retain substantially

¹³ 12 U.S.C. § 1828(c)(5)(A).

¹⁴ 12 U.S.C. § 1828(c)(5)(B).

¹⁵ 12 U.S.C. § 1828(c)(5).

¹⁶ Commenters alleged that the proposal has been structured to evade the requirements of the Bank Merger Act. Commenters also object to the involvement of Capital One Bank in the transaction, alleging that Capital One Bank has managerial weaknesses and deficiencies in its compliance and anti-money-laundering programs. Capital One Bank is a national bank; the Office of the Comptroller of the Currency ("OCC"), and not the Board, determines whether a combination resulting in a national bank requires prior approval under the Bank Merger Act. The Board has consulted with the OCC in connection with this proposal and understands that the OCC does not object to CapitalOne Bank's acquisition of the credit-card loans and related assets and assumption of nondeposit liabilities of World's Foremost Bank from SynovusBank.

all of World's Foremost Bank's assets and liabilities. Synovus Bank appears to have adequate financial resources to absorb the costs of acquiring and integrating substantially all of World's Foremost Bank's assets and deposits. The asset quality, earnings, and liquidity of Synovus Bank and World's Foremost Bank are consistent with approval. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the existing institutions and of Synovus Bank after consummation of the proposal. The Board has considered Synovus Bank's plans for implementing the proposal and has reviewed the examination records of Synovus Bank and World's Foremost Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered Synovus Bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Synovus Bank is considered to be well managed, and its board of directors and senior management have substantial banking experience. Moreover, Synovus Bank has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address the post-integration process for this proposal. Synovus Bank appears to have the managerial and operational resources to address all aspects of the post-integration process. Synovus Bank also would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Synovus Bank's management has the experience and resources to ensure that the bank operates in a safe and sound manner after consummation of the proposal.

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

Convenience and Needs Considerations

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

¹⁷ 12 U.S.C. § 1828(c)(5).

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the applicant institution's business model, its marketing and outreach plans, the organizations' 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 Synovus Bank and World's Foremost Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; information provided by Synovus Bank; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from a commenter who objected to the proposal, alleging, based on data for 2015 reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²⁰ that Synovus Bank made a disproportionately low number of home purchase loans to African American and Hispanic borrowers, as compared to white borrowers, in the Atlanta–Sandy Springs–Roswell, Georgia, Metropolitan Statistical Area ("Atlanta MSA"); that Synovus Bank made a disproportionately low number of home purchase loans to African American borrowers in the Birmingham–Hoover, Alabama, MSA ("Birmingham MSA"); and that Synovus Mortgage made a disproportionately low number of home mortgage loans to African American and Hispanic borrowers in the Charlotte–Concord–Gastonia, North Carolina–South Carolina MSA ("Charlotte MSA").²¹ A second commenter objected to the proposal alleging that Synovus Bank's CRA and fair lending records are worse than those of its peer institutions in several markets, including Atlanta and Columbus, both in Georgia; Columbia and Charleston, both in South Carolina; Nashville, Tennessee; and Charlotte, North Carolina. The commenter also alleged that Synovus Bank received "low satisfactory" ratings for its CRA lending test performance in South Carolina and the Chattanooga, Tennessee–Georgia, MSA ("Chattanooga MSA"), and a "needs to improve" rating for the bank's performance in the state of Tennessee. The commenter also alleged that the bank makes too few home mortgage loans to African American and LMI borrowers and in minority census tracts. The commenter asserted that Synovus Bank should increase its level of community development lending and investment and that Synovus Bank has not demonstrated that a significant public benefit would result from the proposal.

Business of the Involved Institutions and Response to Comments

Synovus Financial and Synovus Bank offer a range of financial products and services to individuals and businesses. Through its branch network in Alabama, Florida, Georgia, South Carolina, and Tennessee, Synovus Bank offers banking products and services to its

²⁰ 12U.S.C. § 2801 *et seq.*

²¹ A commenter also objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans Capital One Bank denied for African American and Hispanic borrowers as compared to white borrowers. The commenter also noted that Capital One Bank proposes to close branches in Laurel, Gaithersburg, Frederick, and Merrifield, all in Maryland. Capital One Bank's record of HMDA lending and branch closings are beyond the jurisdiction of the Board to consider when reviewing the application by Synovus Bank under the Bank Merger Act. Any review of Capital One Bank's compliance and HMDA lending records and branch closing proposals would be within the purview of the OCC.

customers, including consumer- and commercial-banking services, mortgage lending, treasury management, and investment services.

World's Foremost Bank is a credit-card bank that engages in only a limited set of lending and deposit-taking activities. The bank has one retail office and accepts only certain types of deposits.

In response to the commenters' allegations, Synovus Bank states that it has operated as a community-oriented financial institution since its founding and that it offers a variety of loan and deposit products and other services that meet the financial needs of its communities, including LMI individuals and small businesses. Synovus Bank represents that it has implemented policies and procedures to ensure compliance with all consumer-protection and fair lending laws and regulations and conducts regular reviews of its policies and procedures. Synovus Bank further represents that it is involved with community development organizations that focus on economic development and affordable housing opportunities for LMI individuals and communities.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institution, as well as information and views provided by the appropriate federal supervisors.²²

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

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

²² See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

²³ 12 U.S.C. § 2906.

amounts of loans to low-, moderate-, middle-, and upper-income individuals;²⁴ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The CRA permits a bank to apply to its primary federal regulator to be designated as a wholesale or a limited-purpose bank.²⁵ The CRA performance of a wholesale or limited-purpose bank is assessed by evaluating the bank's community development activities.²⁶ This evaluation involves an assessment of (1) the number and amounts of community development loans (including originations and purchases of loans, and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services; (2) the use of innovative or complex qualified investments, community development loans, or community development services, and the extent to which the investments are not routinely provided by private investors; and (3) the bank's responsiveness to credit and community development needs.²⁷ Based on its business activities, World's Foremost Bank has been designated as a limited-purpose bank.

As noted above, two commenters allege that HMDA data reported for 2015 by Synovus Bank show that Synovus Bank made a disproportionately low number of conventional home purchase and refinance loans to minority borrowers in several of its assessment areas. The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.²⁸ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution. In this case, as noted above, the Board has considered all the facts of record, including the fair lending and compliance records of both banks; the supervisory views of the FDIC and the CFPB; confidential supervisory information; information provided by Synovus Bank; and the public comments received on the proposal.

CRA Performance of Synovus Bank

Synovus Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 7, 2013 ("Synovus Bank Evaluation").²⁹

²⁴ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

²⁵ 12 CFR 228.25. A limited-purpose bank is one that offers only a narrow product line (such as credit-card or motor-vehicle loans) to a regional or broader market and for which a designation as a limited-purpose bank is in effect. A wholesale bank is one that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers.

²⁶ 12 CFR 228.25(c).

²⁷ *Id.*

²⁸ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

²⁹ The Synovus Bank Evaluation was conducted using Large Bank CRA Examination Procedures. FDIC examiners reviewed home mortgage lending from 2011 through June 30, 2013. FDIC examiners reviewed small business and community development loans from 2011 through June 30, 2013. FDIC examiners reviewed community development loans, donations (investments), and community development services from January 1, 2011, through September 30, 2013. The Synovus Bank Evaluation covered Synovus Bank's 45 assessment areas

Synovus Bank received “High Satisfactory” ratings for the Lending Test and Service Test and a “Low Satisfactory” rating for the Investment Test.

FDIC examiners found that Synovus Bank’s overall lending levels reflected excellent responsiveness to assessment area credit needs. According to examiners, the bank’s geographic distribution of loans reflected very good penetration throughout the bank’s assessment areas. Examiners also found that the bank’s distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. FDIC examiners noted that Synovus Bank exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, which include low-income individuals and very small businesses. Examiners also found that Synovus Bank used innovative and flexible lending programs to serve its assessment area credit needs. Examiners noted that Synovus Bank made an adequate level of community development loans.

In several areas of concern to the commenters, FDIC examiners found that Synovus Bank’s distribution of borrowers reflected either a good or an adequate penetration of small business loans and among individuals of different income levels, including LMI individuals.³⁰ FDIC examiners noted that the bank’s geographic distribution of small business and home mortgage loans reflected either good or adequate penetration throughout many of the bank’s assessment areas.³¹ Examiners further noted that Synovus Bank provided a good array of innovative or flexible lending programs in many areas of concern to the commenters.³² FDIC examiners also noted that the bank’s record of community development lending was either excellent, good, or adequate in many of the bank’s assessment areas.³³

In the Chattanooga MSA, another area of concern to a commenter, FDIC examiners found that the bank’s small business lending in LMI census tracts was generally adequate. Examiners noted that Synovus Bank’s distribution of home mortgage loans in the assessment area reflected limited originations in moderate- and low-income geographies. FDIC examiners further noted that small business lending among businesses of different sizes was generally adequate, and the bank originated a limited number of home mortgage loans to LMI borrowers.

FDIC examiners found that Synovus Bank had an adequate level of qualified community development investments and grants. Examiners noted that these investments and grants exhibited a good responsiveness to credit and community development needs. The bank made qualified investments in mortgage backed securities collateralized by mortgage loans made to LMI borrowers. The bank also invested in U.S. Housing and Urban Develop-

located in five states and two multistate MSAs: Alabama; Florida; Georgia; South Carolina; Tennessee; the Chattanooga MSA; and the Columbus, Georgia–Alabama, MSA (“ColumbusMSA”). The Synovus Bank Evaluation included a full-scope review of 11 of these assessment areas, including both multistate MSAs and the Atlanta MSA; the Birmingham MSA; the Columbia, South Carolina, MSA (“Columbia MSA”); the Charleston–North Charleston, South Carolina, MSA (“Charleston MSA”); and the Nashville–Davidson–Murfreesboro–Franklin, Tennessee, MSA (“Nashville MSA”). A limited-scope review was conducted in the remaining 34 assessment areas. The Synovus Bank Evaluation was released on September 1, 2015.

³⁰ Examiners noted good penetration of small business loans and among individuals of different income levels in the Charleston, Columbia, Columbus, and Nashville MSAs, as well as in Tennessee. Examiners found adequate penetration in the Atlanta MSA.

³¹ Examiners noted that the bank’s distribution of small business and home mortgage loans reflected good penetration in the Birmingham, Charleston, and Columbus MSAs, as well as in Tennessee. Examiners found adequate penetration in the ColumbiaMSA and in South Carolina.

³² These areas include the Columbia, Columbus, and Charleston MSAs and South Carolina.

³³ Examiners noted excellent community development lending in the Charleston MSA, good community development lending in the Atlanta MSA and in South Carolina, and adequate community development lending in the Columbus MSA and in Tennessee.

ment bonds, Low-Income Housing Tax credit funds, Small Business Investment Corporation funds, and community reinvestment partner projects.

FDIC examiners found that Synovus Bank's delivery systems were accessible to essentially all portions of the bank's assessment areas. Examiners also noted that, to the extent changes have been made, Synovus Bank did not adversely affect the accessibility of its delivery systems in LMI geographies or to LMI individuals. FDIC examiners further noted that the bank provided a relatively high level of community development services. Examiners indicated that Synovus Bank's officers and employees served in positions at local and statewide organizations that address a wide range of community needs, including a focus on affordable housing, economic development, small business development, financial education, services for at-risk youth, and services to LMI individuals and areas.

In several areas of concern to the commenters, FDIC examiners found that the bank's delivery systems were either accessible to essentially all portions of the bank's assessment areas or were reasonably accessible to essentially all portions of the bank's assessment areas.³⁴ Examiners also noted that Synovus Bank provided either a high or an adequate level of community development services that benefited organizations within the bank's assessment areas.³⁵ In several areas of concern to the commenters, examiners noted that the bank's services were tailored to the needs of its assessment areas.³⁶

In the Nashville MSA, another area of concern to a commenter, FDIC examiners noted that the bank's delivery systems were accessible to limited portions of the assessment area. Examiners also found that the bank provided a limited level of community development services within the assessment area.

In Tennessee, another area of concern to a commenter, FDIC examiners noted that Synovus Bank provided an adequate level of community development services that benefited organizations throughout Tennessee. Examiners further noted that the officers, directors, and employees of the bank were involved in community development organizations that provided affordable housing, small business assistance, economic development, and community services for LMI individuals and income areas. Examiners noted that no branches or ATMs were located in LMI census tracts.

Synovus Bank's Efforts since the 2013 CRA Evaluation

Synovus Bank represents that it has continued to help serve the credit needs of all of its assessment areas since the Synovus Bank Evaluation. Synovus Bank represents that it has originated community development loans that were responsive to community needs, including loans for LMI individuals and in LMI geographies. Synovus Bank also represents that it participates in a statewide lending consortium that provides affordable housing throughout Alabama.

In addition, Synovus Bank represents that it provides an adequate level of qualified CRA investments that are responsive to community development needs, including funding for low-income housing projects and investments in mortgage-backed securities that are collateralized by mortgage loans made to LMI borrowers. Synovus Bank represents that its offi-

³⁴ Examiners noted that the bank's delivery systems were accessible to essentially all portions of the bank's assessment areas in the Atlanta, Chattanooga, and Columbus MSAs, and were reasonably accessible in the Birmingham, Charleston, and Columbia MSAs, as well as in South Carolina.

³⁵ Examiners noted that the bank provided a high level of community development services in the Atlanta and Birmingham MSAs and an adequate level in the Chattanooga, Columbia, and Columbus MSAs, as well as in South Carolina.

³⁶ These areas include the Chattanooga and Columbus MSAs and South Carolina.

cers, directors, and employees engage in activities that support affordable housing for LMI individuals and economic development of LMI geographies. The bank further represents that it participates in programs with the Small Business Administration to help meet the credit needs of small businesses. Synovus Bank also represents that it has a CRA mortgage loan program that provides LMI borrowers in the Atlanta and Birmingham MSAs with financing for purchases or refinancing for owner-occupied residences and another CRA mortgage loan program offered in the bank's five-state footprint that provides down-payment assistance to LMI borrowers.

CRA Performance of World's Foremost Bank

World's Foremost Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of August 18, 2014 ("World's Foremost Bank Evaluation").³⁷

FDIC examiners noted that World's Foremost Bank had an adequate level of community development services and qualified investments. Examiners found that the bank occasionally used innovative and complex qualified investments and community development services. Further, FDIC examiners noted that the bank's qualified investments helped to provide affordable housing and revitalize and stabilize underserved nonmetropolitan middle-income geographies and provided community services to LMI individuals. Examiners also found that World's Foremost Bank exhibited adequate responsiveness to credit and community economic development needs in its assessment area. Examiners noted that the bank provided community development activities that supported health services, education, public safety, public services, and affordable housing.³⁸

World's Foremost Bank's Efforts since the 2014 CRA Evaluation

Synovus Bank represents that World's Foremost Bank has continued to help meet the community development needs of its assessment area since the World's Foremost Bank Evaluation. Synovus Bank represents that World's Foremost Bank has continued to provide CRA-qualified investments and community development services. Synovus Bank also represents that World's Foremost Bank's investments support economic development projects, help to provide affordable housing, and provide services for at-risk youth and wounded veterans. Synovus Bank represents that World's Foremost Bank's community development services support financial literacy and provide mentoring to young people.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance review conducted by examiners of the Federal Reserve Bank of Atlanta ("Reserve Bank"), which included a

³⁷ The World's Foremost Bank Evaluation was conducted using limited purpose CRA examination procedures. The limited purpose evaluation reviewed the bank's community development lending; qualified investments or community development services; use of innovative or complex qualified investments; community development loans or community development services; and the bank's responsiveness to community development credit needs within its assessment area. The evaluation period was from February 19, 2013, to August 18, 2014. The World's Foremost Bank Evaluation included a review of the bank's assessment area in Cheyenne County, Nebraska.

³⁸ One commenter alleged that World's Foremost Bank previously received less-than-satisfactory CRA ratings due to violations of the Equal Credit Opportunity Act and the Unfair or Deceptive Acts or Practices provision of the Federal Trade Commission Act. As of 2014, FDIC examiners found World's Foremost Bank's CRA performance to be "Satisfactory." No consumer compliance functions of World's Foremost Bank would be acquired by Synovus Bank as part of the proposal.

review of Synovus Bank's consumer compliance risk management program.³⁹ The FDIC and the CFPB also have conducted examinations of Synovus Bank's compliance with fair lending laws and regulations. As part of its consumer compliance examination in 2013, the FDIC conducted a review of the bank's fair lending policies, procedures, and practices, including a review of the bank's residential mortgage products, its underwriting and pricing practices, and its lending policies. The CFPB also conducted a fair lending review of the mortgage origination activities of Synovus Bank and its wholly owned subsidiary, Synovus Mortgage Corporation, including a review of the bank's compliance program, policies and procedures, and training.

The Board has taken the results of these examinations into account in evaluating this proposal, including in considering whether Synovus Bank has the experience and resources to ensure that the combined organization would effectively implement policies and programs that would allow the combined organization to serve the credit needs of all the communities within the firm's assessment areas.

Additional Convenience and Needs Considerations

The Board also has considered other potential effects of the proposal on the convenience and needs of the communities to be served. Synovus Bank represents that it would continue to offer the same products and services and that, as a result of the proposal, the bank will not change or discontinue any products or services currently being offered. Synovus Bank further represents that the increase in deposits will allow the bank to provide greater retail banking and community development services to all of the communities it serves, including LMI neighborhoods through increased loan generation in its retail, commercial, and mortgage programs.⁴⁰

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") added "risk to the stability of the United States banking or financial system" as a factor that must be considered under the Bank Merger Act.⁴¹

³⁹ Synovus Bank was subject to the FDIC's jurisdiction until November 2016 when it became a state member bank. Prior to the Board's approval of Synovus Bank's membership application, Reserve Bank examiners conducted a review of Synovus Bank's policies, procedures, practices, and systems.

⁴⁰ One commenter urged the Board to approve the application on the condition that Synovus Bank adopt and successfully implement a community benefits plan. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. See, e.g., *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp.*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

⁴¹ Dodd-Frank Act § 604(f), Pub. L. No. 111-203, 124 Stat. 1376, 1602 (2010), amending 12 U.S.C. § 1828(c)(5).

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴² These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴³

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. 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. 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 resulting bank in the event of financial distress. In addition, the resulting bank would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴⁵ In reaching its conclusion, the Board has consid-

⁴² Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

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

⁴⁴ See *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.

⁴⁵ A commenter requested that the Board hold public hearings or meetings on the proposal. The Bank Merger Act does not require that the Board hold a public meeting or a public hearing on any application. 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 represent their views. The Board has considered the commenter’s request in light of all the facts of record. In the Board’s view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written

ered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Synovus Bank with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective September 6, 2017.

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

comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied.

Orders Issued Under Federal Reserve Act

Veritex Holdings, Inc.
Dallas, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2017-18 (July 6, 2017)

Veritex Holdings, Inc. (“Veritex Holdings”), Dallas, Texas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with Sovereign Bancshares, Inc. (“Sovereign Bancshares”), and thereby indirectly acquire Sovereign Bank, both of Dallas, Texas.

In addition, Veritex Holdings’ subsidiary state member bank, Veritex Community Bank (“Veritex Bank”), Dallas, Texas, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Sovereign Bank, with Veritex Bank as the surviving entity.³ Veritex Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of Sovereign Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 *Federal Register* 8425 (January 25, 2017)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Veritex Holdings, with consolidated assets of approximately \$1.4 billion, is the 524th largest insured depository organization in the United States.⁶ Veritex Holdings controls approximately \$1.1 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Veritex Holdings controls Veritex Bank, which operates only in Texas. Veritex Holdings is the 64th largest insured depository organization in Texas, controlling deposits of approximately \$1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁸

Sovereign Bancshares, with consolidated assets of approximately \$1.1 billion, is the 670th largest insured depository organization in the United States, controlling approximately \$857.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Sovereign Bancshares controls Sovereign Bank, which operates only in Texas. Sovereign Bancshares is

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

⁶ National asset data, market share, and ranking data are as of December 31, 2016, unless otherwise noted.

⁷ In this context, insured depository institutions include commercial banks, credit unions, savings and loan associations, and savings banks.

⁸ State asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted.

the 80th largest insured depository organization in Texas, controlling deposits of approximately \$814.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Veritex Holdings would become the 338th largest insured depository organization in the United States, with consolidated assets of approximately \$2.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Veritex Holdings would control consolidated deposits of approximately \$2.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. Veritex Holdings would become the 38th largest insured depository organization in Texas, controlling deposits representing less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁹ Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

Veritex Holdings and Sovereign Bancshares have subsidiary depository institutions that compete directly in the Dallas, Texas, banking market (“Dallas market”).¹¹ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market (“market deposits”) that Veritex Holdings would control;¹² 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”);¹³ and other characteristics of the market.

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

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

¹¹ The Dallas market includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie and Ferris in Ellis County, all in Texas.

¹² Local deposit and market share data are as of June 30, 2016, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) 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).

¹³ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Dallas market. On consummation of the proposal, the Dallas market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this market would be small, and numerous competitors would remain in the market.¹⁴

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁵ In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete 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.

Veritex Holdings and Sovereign Bancshares are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, with a subsequent merger of Veritex Bank and Sovereign Bank.¹⁶ The asset quality, earnings, and liquidity of both Veritex Bank

¹⁴ Veritex Holdings operates the 23rd largest depository institution in the Dallas market, controlling approximately \$1.0 billion in deposits, which represent less than 1 percent of market deposits. Sovereign Bancshares operates the 28th largest depository institution in the same market, controlling approximately \$539.7 million in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Veritex Holdings would become the 16th largest depository organization in the market, controlling deposits of approximately \$1.6 billion, which represent less than 1 percent of market deposits. The HHI for the Dallas market would increase by 1 point to 1792, and 121 competitors would remain in the market.

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

¹⁶ To effect the holding company merger, a wholly owned subsidiary of Veritex Holdings formed to facilitate the transaction would merge with Sovereign Bancshares, with Sovereign Bancshares as the surviving entity, and immediately thereafter Sovereign Bancshares would merge with Veritex Holdings, with Veritex Holdings as the surviving entity. Upon consummation of that merger, each share of Sovereign Bancshares common stock would be entitled to receive a portion of the aggregate merger consideration, which would consist of Veritex Holdings common stock and cash. Sovereign Bank would then merge with and into Veritex Bank, with Veritex Bank as the surviving entity. Veritex Holdings has the financial resources to effect the transaction.

and Sovereign Bank are consistent with approval, and Veritex Holdings appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

The Board also has considered Veritex Holdings' plans for implementing the proposal. Veritex Holdings has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. Veritex Holdings would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Veritex Holdings' management has the experience and resources to operate the combined organization in a safe and sound manner, and Veritex Holdings plans to integrate Sovereign Bancshares' existing management and personnel in a manner that augments Veritex Holdings' management.¹⁷

Based on all the facts of record, including the supervisory records of Veritex Holdings, Sovereign Bancshares, and their subsidiary banks, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Veritex Holdings and Sovereign Bancshares in combating money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁸ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the

¹⁷ On consummation, Sovereign Bancshares' president and chief executive officer, as well as the chairman of its board of directors, will be appointed to the boards of directors of Veritex Holdings and Veritex Bank. Additionally, one of these individuals is expected to be appointed vice chairman of the board of directors of Veritex Holdings.

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

relevant depository institutions under the Community Reinvestment Act (“CRA”).¹⁹ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁰ and requires the appropriate federal financial supervisory agency to assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²¹

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

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 Veritex Bank and Sovereign Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Veritex Holdings; and the public comments received on the proposal.

Public Comments Regarding the Proposal

The Board received comments from one commenter opposing the proposal. The commenter alleged that Veritex Bank discriminates against African Americans and “redlines” African American neighborhoods, particularly in the Dallas and Houston areas,²² both in Texas, with respect to its branching, marketing, and lending activities.²³ The commenter also alleged that Veritex Bank has designated its CRA assessment area in a manner that excludes majority African American neighborhoods in Dallas. In addition, the commenter alleged that Sovereign Bank also discriminates against African Americans and redlines African American neighborhoods.

Businesses of the Involved Institutions and Response to Comments

Veritex Holdings and Veritex Bank offer a range of financial products and services to individual customers and businesses. Veritex Bank is a full-service retail bank offering agricultural, commercial, home purchase, home improvement, home equity, and vehicle loans. Through its network of 11 branches, Veritex Bank offers a wide range of deposit products including various checking accounts, savings accounts, certificates of deposit, individual retirement accounts, money market accounts, and NOW accounts. Veritex Bank also provides automated teller machines, debit cards, and internet banking.

Sovereign Bancshares and Sovereign Bank offer deposit and loan products and specialize in commercial banking activities. Sovereign Bank offers a range of financial products and

¹⁹ 12 U.S.C. § 2901 *et seq.*; 12 CFR 225.13(b)(3).

²⁰ 12 U.S.C. § 2901(b).

²¹ 12 U.S.C. § 2903.

²² Veritex currently has no branch locations in Houston.

²³ 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>.

services to individual customers and businesses, including business loans, commercial real estate lending, and consumer deposit products.

Veritex Holdings denies the commenter's allegations of discriminatory lending and redlining with respect to the branching, marketing, and lending activities of Veritex Bank. Veritex Holdings asserts that Veritex Bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations, and asserts that Veritex Bank designated the entirety of two counties in the Dallas area as its CRA assessment area,²⁴ in part to ensure that no LMI or high minority census tracts were excluded or neglected. Veritex Holdings further asserts that Veritex Bank's management is committed to ensuring that no geographic areas are excluded by branch location decisions. With respect to fair lending, Veritex Holdings asserts that the bank has implemented policies and procedures to ensure fair lending compliance, including an equal credit opportunity policy and a fair lending policy, among others. Veritex Holdings represents that Veritex Bank monitors and reviews loan policies and practices for the purpose of measuring compliance with fair lending laws and equal credit opportunity requirements, and that this monitoring includes internal and external audits, as well as training programs.

In response to the commenter's criticism that Veritex Bank has no advertising or marketing efforts directed at African American communities, Veritex Holdings asserts that Veritex Bank has directed advertising and marketing efforts towards individuals and small businesses in areas typically underserved by banks, including African American communities. Veritex Holdings represents that these marketing efforts include partnerships with various community organizations, including one that facilitates micro lending to low- and moderate-income individuals.

The commenter also noted that Sovereign Bank discriminates against African Americans and redlines in African American neighborhoods. Veritex Holdings notes that as part of its community development activities, a majority of Sovereign Bank's community development loans have been to borrowers in predominantly minority census tracts. Veritex Holdings represents that as part of Sovereign Bank's CRA efforts, it has made qualified donations to organizations that help to support financial literacy and money management to individuals in census tracts that are over 50 percent minority, as well as to organizations that focus on housing, ending homelessness, and providing other social services targeted to LMI individuals in the Dallas metropolitan area. Further, Veritex Holdings represents that, through Sovereign Bank branch locations, bank personnel provide community development services to organizations located in predominantly minority census tracts and meet with different community groups, including an alliance for the homeless, which helps the bank better understand the needs of the communities it serves. Veritex Holdings also represents that Sovereign Bank has implemented processes to comply with anti-discrimination requirements, including the establishment of a fair lending committee that reviews, among other things, high-rate loans and consumer loans with origination fees.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to the information provided by the public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views

²⁴ These counties, the Dallas and Collin counties, are defined below.

provided by the appropriate federal supervisors.²⁵ In this case, the Board considered the views of its supervisory staff and of examiners from the Federal Reserve Bank of Dallas (“Reserve Bank”) and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁶ 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.²⁷

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution’s available Home Mortgage Disclosure Act (“HMDA”)²⁸ data, automated loan reports, and other reports generated by the institution to assess the institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on the institution’s loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance.²⁹ Intermediate small banks are subject to the lending test, as well as a community development test that evaluates the number and amount of their community development loans and qualified investments; the extent to which they provide community development services; and their responsiveness to community development lending, investment, and service needs.³⁰

CRA Performance of Veritex Bank

Veritex Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 (“Veritex Bank Evaluation”).³¹ The bank received “Satisfactory” ratings for each of the Lending Test and the Community Development Test. The Veritex Bank Evaluation included full-scope evaluations of Dallas and Collin counties in the Dallas-Plano-Irving Metropolitan Division, an area of concern to the commenter.

Examiners concluded that the bank’s performance demonstrated a reasonable responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of

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

²⁶ 12 U.S.C. § 2906.

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁸ 12 U.S.C. § 2801 *et seq.*

²⁹ See 12 CFR 228.26(b).

³⁰ See 12 CFR 228.26(c).

³¹ The Veritex Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed HMDA loans reported by Veritex Bank in 2014 and 2015 and small business loans originated by the bank between April 1, 2016, and September 30, 2016. For the Community Development Test, examiners reviewed community development lending, investments, and services based on data from November 12, 2013, through January 23, 2017.

the bank's HMDA and small business loans were originated inside its assessment area. Examiners found that the bank's net loan-to-deposit ratio was considered reasonable, given the bank's size and financial condition, the credit needs of the assessment area, and the competitive local banking environment.

Examiners also found that the bank's distribution of lending to borrowers reflected a reasonable penetration among individuals of different income levels (including LMI borrowers) and that the geographic dispersion of the bank's lending was reasonable given the performance context. Examiners determined that the distribution of HMDA loans by borrower income level was reasonable given the high level of competition in the assessment area and low volume of loans originated to LMI borrowers by the aggregate lenders. Loans were generally made in close proximity to the bank's branches, and there were no conspicuous gaps or anomalies in the lending patterns. The distribution of the remainder of bank lending in middle- and upper-income geographies did not affect the conclusions about the bank's performance considering its lending in LMI geographies. With respect to small business lending, examiners found geographic distribution to be reasonable.

Examiners also determined that Veritex Bank's responsiveness to community development needs was adequate considering the bank's capacity and its primary focus as a commercial lender. Examiners noted that the bank applied its community development resources strategically to meet community needs, primarily through qualified loans and community services targeted to LMI individuals in its community, and that the bank provided community development services through its branches in LMI areas. Examiners found that the bank provided a high level of retail services in its assessment area. Specifically, examiners found Veritex Bank's delivery systems to be accessible to geographies and individuals of different income levels in its assessment area. Examiners also noted that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals, and that its services did not vary in a way that inconvenienced its assessment area, particularly LMI geographies and individuals.

CRA Performance of Sovereign Bank

Sovereign Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of March 30, 2015 ("Sovereign Bank Evaluation").³² Sovereign Bank received a "Satisfactory" rating for the Lending Test and an "Outstanding" rating for the Community Development Test. Although Sovereign Bank's overall rating took into consideration its performance in each of its MSA AAs, examiners gave significantly more weight to the bank's records in the Dallas, Texas MSA AA due to the higher volume of loans in that area.

For the Lending Test, examiners evaluated Sovereign Bank's small business loans. Based on this evaluation, examiners found that Sovereign Bank's loan-to-deposit ratio reflected reasonable responsiveness to credit needs in its assessment areas given its size and financial

³² The Sovereign Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. For the Lending Test, examiners reviewed small business loans originated by the bank from January 1, 2014, through December 31, 2014. Because commercial loans comprised approximately 49 percent of the bank's loan portfolio and its primary product line, examiners focused the Lending Test on small business loans. For the Community Development Test, examiners reviewed the bank's qualified community development lending, investments, and service activities from June 19, 2012, through March 30, 2015.

The Sovereign Bank Evaluation included a full-scope review of performance in the Dallas-Fort Worth-Arlington, Texas Metropolitan Statistical Area Assessment Area ("Dallas, Texas MSA AA"); and a limited-scope review of performance in the Austin-Round Rock, Texas MSA assessment area and the Houston-The Woodlands-Sugar Land, Texas MSA assessment area.

condition. Examiners found that Sovereign Bank originated a majority of its lending within the bank's assessment areas. Specifically, examiners noted that Sovereign Bank originated a majority of its small business loans by number and dollar volume inside of its assessment areas. Examiners found that Sovereign Bank displayed a reasonable level of penetration regarding its distribution of loans based on borrower profile and that the bank's record of lending to businesses of different sizes reflected a reasonable performance. Examiners also found that Sovereign Bank demonstrated a reasonable record of geographically distributing its loans throughout the assessment areas. Examiners found that the bank's lending in moderate-income areas reflected reasonable performance, but lending in low-income census tracts demonstrated poor performance. However, examiners noted that the geographic distribution of the bank's small business loans reflected a reasonable record of lending within the assessment areas when performance context factors that mitigate the bank's small business loan originations in LMI census tracts were considered. These performance context factors include (1) the bank's concentrated marketing efforts in LMI areas to increase small business loan volume through its Small Business Administration Loan Programs, such as by mailing out letters advertising the program in each assessment area, and (2) the bank's targeting of businesses, and specifically those with gross annual revenues of less than \$1 million, in the bank's low-income census tracts. Overall, examiners noted that, considering efforts made to increase small business lending in LMI areas and the heavy concentration of bank competition in the Dallas MSA AA, the bank's geographic distribution of small business loans reflected reasonable dispersion.

With respect to community development, examiners considered Sovereign Bank's community development loans, community development investments, and community development services. Examiners found that Sovereign Bank demonstrated an excellent record regarding its community development lending. Examiners also found that Sovereign Bank exhibited an adequate record regarding its community development investments and donations. Specifically, examiners noted that the bank had adequate responsiveness to community development needs combined with an adequate level regarding the number and dollar volume of community development investments and donations. Examiners found that Sovereign Bank established an excellent record of providing community development services to LMI individuals through its contribution of financial expertise and involvement in activities directed at LMI individuals and families. Examiners further noted that Sovereign Bank provided a range of banking products and services to meet the needs of consumer and commercial customers and that its branch offices and delivery systems were readily accessible to LMI borrowers.

Sovereign Bank's Efforts since the Sovereign Bank Evaluation

Veritex Holdings represents that since the Sovereign Bank Evaluation, Sovereign Bank has worked to continue to serve its communities through its small business lending, community service activities, outreach efforts, investments, and donations. Specifically, Veritex Holdings represents that since its last evaluation, Sovereign Bank has continued to provide for community development services through non-profit organizations to LMI individuals and that the bank's employees have continued to serve its communities through work on the boards of directors of non-profit organizations. Veritex Holdings represents that Sovereign Bank's CRA committee meets with different community groups, which helps the bank understand the needs of the communities it serves.

Additional Supervisory Reviews

The Board has considered the results of the most recent consumer compliance examinations of Veritex Bank conducted by Reserve Bank examiners, which included a review of the compliance management program and the banks' compliance with consumer protec-

tion laws and regulations. As part of the consumer compliance examinations, Reserve Bank examiners also evaluated Veritex Bank's fair lending management program, including the bank's fair-lending-related practices, policies, procedures, and internal controls.

The Board also has considered the results of a recent consumer compliance examination of Sovereign Bank conducted by FDIC examiners, which included a review of the bank's compliance management system and the bank's compliance with consumer protection laws, including fair lending laws and regulations.

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. Veritex Holdings represents that it has no plans to discontinue any significant product or service currently offered by Veritex Bank or Sovereign Bank. Specifically, Veritex Bank represents that it will continue to offer customers a range of deposit and credit products and services that benefit the communities in which Veritex Bank and Sovereign Bank each presently conduct business, including those credit products and services that fulfill the needs of LMI demographics. Veritex Bank represents that, following the proposed transaction, customers of Sovereign Bank would have access to a complement of products and services that are more expansive than those currently available to Sovereign Bank customers, including residential mortgage loan products, and that Sovereign Bank customers would also have increased access to Veritex Bank's offices by telephone and online applications, which may increase access to banking services. In addition, Veritex Bank asserts that customers of both institutions would benefit from a more expansive branch and ATM network. Following the proposed transaction, Veritex Bank represents that it will continue to provide a level of service consistent with Veritex Bank's current CRA performance.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Veritex Bank, public comments 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 concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."³³

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

³³ Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601–1602 (2010), codified at 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

cial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁴ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁵

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. 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.³⁷ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Establishment of Branches

Veritex Bank has applied under section 9 of the FRA to establish branches at the current locations of Sovereign Bank.³⁸ The Board has assessed the factors it is required to consider

³⁴ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

³⁶ 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.

³⁷ Veritex Holdings primarily offers commercial and consumer banking services, mortgage banking services, commercial real estate lending, and treasury management. Sovereign Bancshares primarily offers commercial and consumer banking services, commercial real estate lending, and treasury management. In each of the activities in which it engages, Veritex Holdings has, and as a result of the proposal would continue to have, a small market share on a nationwide basis, and numerous competitors would remain for these services.

³⁸ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of Veritex Bank's branches would be permissible under applicable state law. See Tex. Fin. Code §§ 32.203; 32.301(c).

when reviewing an application under that section.³⁹ Specifically, the Board has considered Veritex 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.⁴⁰ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁴¹ 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. Approval of this proposal is specifically conditioned on compliance by Veritex Holdings and Veritex Bank with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective July 6, 2017.

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

Appendix

Branches to Be Established by Veritex Bank

1. 600 West 5th Street, Austin, Texas 78701
2. 150 South Bell Boulevard, Cedar Park, Texas 78613
3. 17950 Preston Road, Suite 100, Dallas, Texas 75252
4. 6060 Sherry Lane, Dallas, Texas 75225
5. 7255 North State Highway 161, Irving, Texas 75039

³⁹ 12 U.S.C. § 322; 12 CFR 208.6.

⁴⁰ Upon consummation of the proposed transaction, Veritex Bank's investments in bank premises would remain within legal requirements, under 12 CFR 208.21.

⁴¹ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board 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. The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in the *Federal Register* on January 25, 2017, and in the relevant newspaper of general circulation (*The Dallas Morning News*) on January 13, January 20, and February 10, 2017. The comment period ended on February 12, 2017. 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.

6. 3800 Matlock Road, Arlington, Texas, 76015
7. 2438 East Southlake Boulevard, Southlake, Texas 76092
8. 2800 West 7th Street, Fort Worth, Texas 76107
9. 5111 San Felipe, Houston, Texas 77056
10. 777 Post Oak Boulevard, Suite 700, Houston, Texas 77056

Regions Bank Birmingham, Alabama

Order Approving the Establishment of Branches *FRB Order No. 2017-19 (July 18, 2017)*

Regions Bank, a state member bank subsidiary of Regions Financial Corporation, both of Birmingham, Alabama, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")¹ and the Board's Regulation H² to establish branches in Georgia, Indiana, Missouri, Tennessee, and Texas, as set forth in Appendix A.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.³ The time for submitting comments has expired, and the Board has considered the proposal and the comments received in light of the factors specified in the FRA.

Regions Bank, with total assets of \$123.6 billion, is the 21st largest depository organization in the United States, controlling approximately \$99.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ Regions Bank operates in 15 states with 1,527 branches, and the bank's main office is in Birmingham, Alabama.⁵

Under section 208.6 of the Board's Regulation H,⁶ which implements section 9 of the FRA, the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community

¹ 12 U.S.C. § 321.

² 12 CFR part 208.

³ 12 CFR 262.3(b).

⁴ State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Total assets are as of March 31, 2017. National asset ranking and deposit data are as of December 31, 2016.

In Georgia, Regions Bank is the 6th largest depository organization, with 124 branches, controlling approximately \$5.9 billion in deposits, which represent approximately 2.6 percent of the total amount of deposits in that state.

In Indiana, Regions Bank is the 12th largest depository organization, with 55 branches, controlling approximately \$2.8 billion in deposits, which represent approximately 2.4 percent of the total amount of deposits in that state.

In Missouri, Regions Bank is the 11th largest depository organization, with 57 branches, controlling approximately \$2.3 billion in deposits, which represent approximately 1.4 percent of the total amount of deposits in that state.

In Tennessee, Regions Bank is the 2nd largest depository organization, with 230 branches, controlling approximately \$17.7 billion in deposits, which represent approximately 12.9 percent of the total amount of deposits in that state.

In Texas, Regions Bank is the 14th largest depository organization, with 76 branches, controlling approximately \$6.0 billion in deposits, which represent approximately 1 percent of the total amount of deposits of insured depository institutions in that state.

⁵ Regions Bank conducts its banking operations through branch locations across the following 15 states: Florida, Tennessee, Alabama, Mississippi, Georgia, Louisiana, Arkansas, Texas, Missouri, Illinois, Indiana, South Carolina, Kentucky, Iowa, North Carolina.

⁶ 12 CFR 208.6(b).

Reinvestment Act (“CRA”);⁷ and (5) whether the bank’s investment in bank premises in establishing the branch satisfies certain criteria.⁸

The Board has considered the application in light of these factors and the public comment received on the proposal. One commenter objected to the proposal, alleging that Regions Bank discriminates against African Americans and “redlines” African American neighborhoods, particularly in the Dallas and Houston areas, both in Texas, with respect to its branching, marketing, lending, and community development activities.⁹

Financial, Managerial, and Other Supervisory Considerations

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

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

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

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

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the

⁷ 12 U.S.C. § 2901 *et seq.*

⁸ 12 CFR 208.21(a). 12 U.S.C. § 321. Under section 9 of the FRA, a state member bank may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, a state member bank may establish branches at any point in a state in which the bank has its main office or a branch. *See* 12 U.S.C. §36(c)(2). Regions Bank has branches in Georgia, Indiana, Missouri, Tennessee, and Texas, and is permitted to establish additional branches under each state’s laws. *See* Ga. Code Ann. §7-1-628.6; Ind. Code §28-2-18-24; Tenn. Code Ann. §§45-2-614 and 45-2-1412; Mo. Rev. Stat. §362.107; and Tex. Fin. Code Ann. §203.006.

⁹ 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>.

¹⁰ 12 CFR 208.21(a).

credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹¹ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹² 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 proposal.¹³

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Regions Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Regions Bank, and the public comment received on the proposal.

Summary of Public Comments on Convenience and Needs

In this case, the Board received comments from a commenter objecting to the proposal, alleging that Regions Bank has engaged in discriminatory practices in Dallas and Houston. Specifically, the commenter alleges that Regions Bank engages in redlining in these areas. The commenter alleges that Regions Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those areas.

Business of the Applicant

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

Record of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information and information

¹¹ 12 CFR 208.6(b)(3).

¹² 12 U.S.C. § 2901(b).

¹³ 12 U.S.C. § 2903.

and views provided by the appropriate federal supervisors.¹⁴ In this case, the Board considered the information collected by and the findings of examiners from the Federal Reserve Bank of Atlanta (“Reserve Bank”), who conducted an on-site CRA performance evaluation of Regions Bank.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁵ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution’s home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution’s data reported under Home Mortgage Disclosure Act (“HMDA”), in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution’s assessment areas; (2) the geographic distribution of the institution’s lending, including the proportion and dispersion of the institution’s lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;¹⁶ (4) the institution’s community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution’s use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when commenters assert that data reflect disparities in the rates of loan applications, originations, or denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution’s credit decisions typically is not available to commenters.¹⁷ Consequently, these alleged disparities must be evaluated in the context of other information regarding the lending record of an institution.

¹⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

¹⁵ 12 U.S.C. § 2906.

¹⁶ 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).

¹⁷ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution’s compliance with fair lending laws.

CRA Performance of Regions Bank

Regions Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the Reserve Bank, as of April 1, 2016 (“Regions Bank Evaluation”).¹⁸ The bank received a “High Satisfactory” rating for the Lending Test, the Investment Test, and the Service Test.¹⁹

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

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

Examiners found that, both overall and in Texas, Regions Bank made a significant level of qualified community development investments in response to community development needs. Examiners rated Regions Bank’s investment performance in Texas as “High Satisfactory.” Examiners found that the majority of Regions Bank’s investments in Texas were concentrated in the Austin or Houston assessment areas and that the bank’s investment performance was good in the Houston assessment area. In addition, the bank’s performance in the Dallas Metropolitan Statistical Area (“MSA”) was found to have exceeded its state-wide investment performance in Texas, due to the bank’s strong mix of contributions and investments that were responsive to local community development and credit needs.

¹⁸ The Regions Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA and small business lending activities reported by the bank from January 1, 2014, through December 31, 2015. The evaluation period for community development lending, investments, and services was July 1, 2014, through March 31, 2016.

¹⁹ Regions Bank’s assessment areas are set forth in Appendix B. The commenter alleged that Regions Bank’s definitions of the Houston and Dallas assessment areas arbitrarily exclude African American neighborhoods in the Houston and Dallas areas. The Board’s regulations prohibit the delineation of a CRA assessment area that reflects illegal discrimination. 12 CFR 228.41(e)(2). Assessment areas generally should include entire political subdivisions. Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48549 (July 25, 2016). The Houston assessment area comprises the entirety of Brazoria, Fort Bend, Galveston, Harris and Montgomery Counties. The Dallas assessment area comprises the entirety of Collin, Dallas, Denton and Rockwell Counties. Reserve Bank examiners found that the bank’s assessment areas were appropriate.

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

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

Regions Bank's Efforts since the 2016 CRA Evaluation

Regions Bank represents that since the Regions Bank Evaluation, it has continued to offer several lending and deposit products specifically designed for LMI populations that are utilized by individuals and businesses in LMI and/or minority census tracts. According to Regions Bank, such products include a Regions Line of Credit, which has been used by customers in Houston and Dallas, its "Regions NOW Banking" suite of services, which is designed for the unbanked and underbanked customers who prefer a pay-as-you-go approach to managing their finances, and its "Savings Account Secured Loans" and lines of credit that allow borrowers to use their savings accounts as collateral. Regions Bank also represents that it offers affordable mortgage products for LMI borrowers, including some products that provide low-income homebuyers with down-payment assistance and no requirement to carry mortgage insurance, which lowers monthly payments.

Regions Bank represents that it has continued to serve the banking needs of its assessment areas, including the Houston and Dallas assessment areas, through community development lending, investments, and services. For example, the bank represents that it has made 264 community development loans since the Regions Bank Evaluation, including two loans in the Houston and Dallas markets. Regions Bank also represents that it has made a number of community development investments that support organizations that focus on LMI and minority individuals and communities, including an investment that supported affordable housing in the Dallas assessment area. Regions Bank represents that it engages in marketing and outreach, including targeted radio and advertising campaigns, to achieve lending penetration in LMI and minority census tracts, including those tracts in the Houston and Dallas assessment areas. Additionally, Regions Bank represents that bank employees have actively participated in a variety of volunteer activities in its assessment areas, including events that target primarily LMI and minority individuals and small business owners, such as participating in financial literacy classes in Dallas.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance examination conducted by Reserve Bank examiners. In addition, the Board has consulted with the Consumer Financial Protection Bureau concerning the bank's supervisory record.

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. The bank asserts that the proposed branches, some of which will include enhanced technologies and expanded services, will provide additional convenience to customers of the bank.

Conclusion on Convenience and Needs Considerations

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.²⁰ The Board's approval is specifically conditioned on Regions Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. For purposes of this action, the conditions and commitments are deemed to be conditions in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective July 18, 2017.

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

²⁰ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the proposal was published in relevant newspapers of general circulation on March 24 and April 12, 2017. The comment periods ended on April 8 and April 27, 2017. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Appendix A**Branches to Be Established by Regions Bank****Georgia Branches**

- Acworth Stilesboro Oaks Branch
Mars Hill Road and Stilesboro Road
Acworth, Georgia 30101
- Parkside West Branch
Dallas Highway and Castell Road
Marietta, Georgia 30064

Indiana Branches

- Marion-University Marketplace Branch
South Western Avenue/Outparcel of University Marketplace
Marion, Indiana 46953

Missouri Branches

- Delmar Branch
6680 Delmar Boulevard
University City, Missouri 63130
- Des Peres Branch
Northeast Corner of Manchester Road and Bopp Road, Hard Corner
Des Peres, Missouri 63131
- Florissant Branch
100 North Highway 67
Florissant, Missouri 63031
- Jungermann Road Branch
Jungermann Road and Glen Park Drive
St. Charles, Missouri 63376
- Lake St. Louis Branch
701 Civic Center Drive
Lake St. Louis, Missouri 63367
- Mid Rivers Mall Branch
Northeast Corner of Mid Rivers Mall Drive and North St. Peters Parkway; 2 Lots
North of Intersection
St. Peters, Missouri 63304
- Twin Oaks Branch
Big Bend Road and Meramec Station Road
Ballwin, Missouri 63021

Tennessee Branches

- Canada Road Branch
Northwest Corner of Canada Road and Highway 64; Hard Corner (Outparcel of Small Shopping Strip)
Lakeland, Tennessee 38002

- Northshore Branch
Northwest Corner of South Northshore Drive and Pinnacle Pointe Way; Hard Corner
Knoxville, Tennessee 37922
- Harriman Midtown Branch
U.S. Highway 70 (Roane State Highway) and Tanner Way
Harriman, Tennessee 37748

Texas Branches

- Alder Trails Branch
Southwest Corner of Barker Cypress Road and Cypress North Houston Boulevard One
Lot South of Hard Corner
Cypress, Texas 77433
- Copperwood Village Branch
Northwest Corner of Highway 6 and Kingfield Drive, Hard Corner
Houston, Texas 77084
- Katy Stableside Branch
North Corner of Gaston Road and Falcon Landing Boulevard, Hard Corner
Katy, Texas 77494
- Katy Westpark Tollway Branch
Northeast Corner of Spring Green Boulevard and FM 1093, 2-3 Lots East of Intersec-
tion
Katy, Texas 77494
- Preston Road Branch
Southwest Corner of Hickory Street and Preston Road; Hard Corner
Frisco, Texas 75034
- Rayford Crossing Branch
Rayford Road and Riley Fuzzel Road (Future Grand Parkway Service Road)
Spring, Texas 77386

Appendix B

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

A limited-scope review was conducted in the bank's assessment areas within the Anniston, Alabama, MSA; the Auburn, Alabama, MSA; Coffee-Covington-Escambia, Alabama; the Daphne, Alabama, MSA; the Decatur, Alabama, MSA; the Dothan, Alabama, MSA; Fayette County, Alabama; the Florence, Alabama, MSA; the Gadsden, Alabama, MSA; the Huntsville, Alabama, MSA; the Mobile, Alabama, MSA; Northern Alabama; Southern Alabama; Tallapoosa-Talladega, Alabama; the Tuscaloosa, Alabama, MSA; the Fayetteville, Arkansas, MSA; the Fort Smith, Arkansas, MSA; the Hot Springs, Arkansas, MSA; the Jonesboro, Arkansas, MSA; Northeast Arkansas; Northwest Arkansas;

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

Order Issued Under International Banking Act

The Bank of East Asia, Limited
Hong Kong SAR, People's Republic of China

Order Approving Establishment of a Branch
FRB Order No. 2017-25 (September 28, 2017)

The Bank of East Asia, Limited (“BEA”), Hong Kong SAR (“Hong Kong”), People’s Republic of China (“China”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA¹ to upgrade its existing limited federal branch in Los Angeles, California, to a full-service branch.² The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.³

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Los Angeles, California (*The Los Angeles Daily News*, July 2, 2012). The time for filing comments has expired, and the Board has considered all comments received.

BEA, with total consolidated assets of approximately \$101.0 billion, is the sixth largest bank in Hong Kong.⁴ Sumitomo Mitsui Financial Group (“SMFG”), through its subsidiary, Sumitomo Mitsui Banking Corporation, both of Tokyo, Japan, owns approximately 19 percent of the voting shares of BEA.⁵ Fundación Bancaria Caixa d’Estalvis i Pensions de Barcelona, “la Caixa” (“la Caixa”), through its subsidiary, Criteria Caixa, S.A., both of Barcelona, Spain, owns approximately 17.3 percent of the voting shares of BEA.⁶ Guoco Management Company Limited (“Guoco”), Hong Kong, China, owns approximately 14.2 percent of the voting shares of BEA.⁷ In addition, Elliot Capital Advisors, L.P.

¹ 12 U.S.C. § 3105(d).

² As a limited branch, the Los Angeles branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of Edge corporations. 12 CFR 211.6(a)(1). Upgrading the limited branch to a full-service branch would permit the branch to accept whole-sale domestic deposits.

³ Under the Board’s Regulation K, upgrading a limited branch to a full-service branch requires Board approval. 12 CFR 211.21(f) and (l)(4); 12 CFR 211.24(a)(1)(A).

⁴ Asset data are as of June 30, 2017, and ranking data are as of December 31, 2016, and each figure is based on the exchange rate as of the respective date. Ownership data are as of December 31, 2016.

⁵ SMFG received Board approval to acquire up to 19.9 percent of BEA’s shares. See *Sumitomo Mitsui Financial Group*, FRB Order No. 2015-07 (February 20, 2015).

⁶ Both SMFG and la Caixa have provided passivity commitments to the Board to ensure that their ownership in, and business relationships with, BEA would not enable them or their affiliates to exercise a controlling influence over BEA for the purposes of the Bank Holding Company Act of 1956, as amended.

⁷ Guoco is the beneficial owner of the shares, and a number of affiliated companies and individuals (together with Guoco, the “Guoco Group”) are deemed to have an interest in the shares through their direct or indirect ownership in Guoco. The Guoco Group has no director or senior management interlocks with BEA and does not engage in material business relationships with BEA. In connection with this application, BEA has committed to monitor the Guoco Group’s ownership of BEA and will inform the Federal Reserve Bank of New York if (1) the Guoco Group acquires more than 20 percent of BEA’s voting shares, (2) the Guoco Group nominates a director to BEA’s board of directors, (3) an individual associated with the Guoco Group is nominated to BEA’s board of directors, or (4) the Guoco Group proposes an item for vote at a shareholder meeting of BEA.

(“Elliot”), Wilmington, Delaware, owns approximately 7.0 percent of the voting shares of BEA.⁸ No other shareholder owns 5 percent or more of BEA’s shares.⁹

BEA engages primarily in retail and commercial banking, wealth management, and insurance services. Outside of Hong Kong, BEA operates a bank subsidiary and branches in China and branches in Macau, Taiwan, the United Kingdom, Singapore, and Malaysia. In the United States, BEA operates three branches¹⁰ and controls Industrial and Commercial Bank of China, National Association (“ICBC-USA”), New York City.¹¹ BEA is a qualifying foreign banking organization under Regulation K.¹²

BEA’s home state is New York. BEA proposes to establish this branch outside of its home state by upgrading its Los Angeles limited branch to a full-service branch pursuant to section 5(a)(7)(B) of the IBA.¹³

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.¹⁴ The Board also considers additional standards as set forth in the IBA and Regulation K.¹⁵

⁸ Elliot’s ownership in BEA is dispersed among a number of companies associated with Elliot, including funds managed by Elliot.

⁹ HKSCC Nominees Limited and The Bank of East Asia (Nominees) Limited hold approximately 79.7 percent and 6.3 percent, respectively, of the shares of BEA as the registered nominees of other shareholders.

¹⁰ In addition to the limited federal branch in Los Angeles, BEA operates both an insured and an uninsured federal branch in New York City.

¹¹ BEA and its subsidiary, East Asia Holding Company, Inc., New York, New York, own 20 percent of the voting shares of ICBC-USA and are bank holding companies by virtue of their control of ICBC-USA.

¹² 12 CFR 211.23(a).

¹³ 12 U.S.C. § 3103(a)(7)(B). That section permits the upgrade of a limited branch to a full-service branch outside a foreign bank’s home state if the establishment and operation of the full-service branch is permitted by the host state and if the limited branch was in operation in the host state prior to September 29, 1994. The proposed upgrade meets the requirements of that section.

¹⁴ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

¹⁵ 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank’s home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank’s record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

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

The Board previously has determined, in connection with applications involving BEA and other banks in Hong Kong, that those banks were subject to comprehensive supervision on a consolidated basis by their home jurisdiction supervisor, the Hong Kong Monetary Authority (“HKMA”).¹⁶ BEA continues to be supervised by the HKMA on substantially the same terms and conditions. Based on all the facts of record, BEA continues to be subject to comprehensive supervision on a consolidated basis by its home jurisdiction supervisor.

The financial and managerial and other applicable factors in the case have also been taken into account. The HKMA has no objection to the establishment of the proposed full-service branch. Hong Kong’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Accord”). BEA’s capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. BEA appears to have the experience and capacity to support the proposed branch and has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. Taking into consideration BEA’s overall financial and managerial resources, financial and managerial factors are considered consistent with approval.

Hong Kong is a member of the Financial Action Task Force (“FATF”) and subscribes to the FATF’s recommendations on measures to combat money laundering and terrorist financing. In accordance with these recommendations, Hong Kong has enacted laws and developed regulatory standards to deter money laundering and terrorist financing. Money laundering is a criminal offense in Hong Kong, and Hong Kong financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. BEA has policies and procedures to comply with these laws and regulations, and BEA’s compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

BEA has committed to make available to the Board such information on the operations of BEA and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, BEA has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, the HKMA may share information on BEA’s operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that BEA has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the IBA to provide that the Board may consider, for a foreign bank that presents

¹⁶ See Letter dated May 14, 2007, from the Federal Reserve Bank of New York to The Hongkong and Shanghai Banking Corporation Limited; *Citic Ka Wah Bank Limited*, 89 *Federal Reserve Bulletin* 435 (2003); Letter dated June 29, 2001, from the Federal Reserve Bank of San Francisco to The Bank of East Asia, Limited; *The Bank of East Asia, Limited*, 84 *Federal Reserve Bulletin* 886 (1998); *Liu Chong Hing Bank*, 81 *Federal Reserve Bulletin* 905 (1995); *Hong Kong and Shanghai Banking Company*, 81 *Federal Reserve Bulletin* 902 (1995); *Dah Sing Bank, Ltd.*, 80 *Federal Reserve Bulletin* 182 (1994).

a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.¹⁷ Information relevant to the standard regarding risk to the stability of the United States financial system has been reviewed. In particular, consideration has been given to (1) the size and scope of BEA's activities, including the type of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability, and (2) the framework in place for supervising BEA in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by BEA as well as to the terms and conditions set forth in this order, BEA's application to upgrade its limited branch in Los Angeles to a full-service branch is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁸ Should any restrictions on access to information on the operations or activities of BEA and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BEA or its affiliates with applicable federal statutes, the Board may require termination of any of BEA's direct or indirect activities in the United States or, in the case of any such operation licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by BEA with the commitments made in connection with this application and with the conditions in this order.¹⁹ The commitments and conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective September 28, 2017.

¹⁷ 12 U.S.C. § 3105(d)(3)(E).

¹⁸ 12 CFR 265.7(d)(12).

¹⁹ The Board's authority to approve the upgrade of the limited branch parallels the continuing authority of the OCC to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed office of BEA in accordance with any terms or conditions that the OCC may impose.