



Legal Developments: Third Quarter, 2019

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Chemical Financial Corporation
Detroit, Michigan

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2019-11 (July 16, 2019)

Chemical Financial Corporation (“Chemical”), Detroit, Michigan, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire TCF Financial Corporation (“TCF”), Wayzata, Minnesota, and thereby indirectly acquire TCF National Bank (“TCF Bank”), Sioux Falls, South Dakota.³ Following the proposed acquisition, Chemical’s subsidiary state member bank, Chemical Bank, Detroit, Michigan, would be merged with and into TCF Bank, with TCF Bank as the surviving entity.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 10826 (March 22, 2019)).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.

Chemical, with consolidated assets of approximately \$21.5 billion, is the 86th largest depository organization in the United States. Chemical controls approximately \$15.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Chemical controls Chemical Bank, which operates in Michigan, Ohio, and Indiana. Chemical Bank is the seventh largest depository institution in Michigan, controlling deposits of approximately \$13.1 billion, which represent 6.0 percent of the total deposits of insured depository institutions in that state.⁷

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The resultant institution would be renamed TCF Financial Corporation upon consummation of the transaction.

⁴ The merger of Chemical Bank into TCF Bank is subject to approval by the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The OCC approved the bank merger on June 20, 2019.

⁵ *See also* 12 CFR 262.3(b).

⁶ National asset data and national deposit, ranking, and market-share data are as of December 31, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

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

TCF, with consolidated assets of approximately \$23.7 billion, is the 80th largest depository organization in the United States. TCF controls approximately \$19.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. TCF controls TCF Bank, which operates in Illinois, Minnesota, Michigan, Colorado, Wisconsin, South Dakota, and Arizona. TCF Bank is the 10th largest depository institution in Michigan, controlling deposits of approximately \$3.2 billion, which represent 1.5 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Chemical would become the 51st largest insured depository organization in the United States, with consolidated assets of approximately \$45.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Chemical would control approximately \$34.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Michigan, Chemical would become the sixth largest insured depository organization, controlling deposits of approximately \$16.3 billion, which represent 7.5 percent of the total deposits of insured depository institutions in that state.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁸ The Board (1) may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;⁹ (2) must take into account the record of the applicant bank under the Community Reinvestment Act of 1977 (“CRA”)¹⁰ and the applicant’s record of compliance with applicable state community reinvestment laws;¹¹ and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States¹² or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹³

For purposes of the BHC Act, the home state of Chemical is Michigan. TCF is located in Arizona, Colorado, Illinois, Michigan, Minnesota, South Dakota and Wisconsin. Chemical is well capitalized and well managed under applicable law, and Chemical Bank has a satis-

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

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 12 U.S.C. § 2901 *et seq.*

¹¹ 12 U.S.C. § 1842(d)(3).

¹² 12 U.S.C. § 1842(d)(2)(A).

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

factory CRA rating and is in compliance with applicable state community reinvestment laws. In addition, TCF Bank has been in existence for more than five years.

On consummation of the proposed transaction, Chemical would control less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In addition, Chemical would control approximately \$16.3 billion of the total amount of deposits of insured depository institutions in Michigan, the only state in which Chemical and TCF have overlapping banking operations. Michigan has no limit on the total amount of in-state deposits that a single banking organization may control, and Chemical's percentage of deposits would not exceed 30 percent of the total amount of in-state deposits.¹⁴ The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) of the BHC Act from approving the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁵ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁶

Chemical and TCF have subsidiary banks that compete directly in the Detroit, Michigan, banking market ("Detroit market").¹⁷ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the relative share of total deposits in insured depository institutions in the market ("market deposits") that Chemical would control;¹⁸ the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");¹⁹ the number of competitors that would remain in the market; and other characteristics of the market.

¹⁴ Mich. Comp. Laws § 487.11104(8) (2019).

¹⁵ 12 U.S.C. § 1842(c)(1)(A).

¹⁶ 12 U.S.C. § 1842(c)(1)(B).

¹⁷ The Detroit market is defined as Oakland; Macomb; Wayne; Lapeer; Genesee; Washtenaw; St. Clair; Livingston; Lenawee; Shiawassee; Monroe (except Whiteford, Bedford, and Erie townships); and Sanilac (except Greenleaf, Austin, Argyle, Moore, Minden, Wheatland, Delaware, and Forester townships) counties, all in Michigan.

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

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

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Detroit market. On consummation of the proposal, the Detroit market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI in this banking market would be small, and numerous competitors would remain in this banking market.²⁰

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

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

Financial, Managerial, and Other Supervisory Considerations

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

Chemical, TCF, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured primarily as a share exchange, with a subsequent merger of the subsidiary depository institutions.²² The asset quality, earnings, and liquidity of both Chemical Bank and TCF Bank are consistent with

²⁰ Chemical operates the ninth largest depository institution in the Detroit market, controlling deposits of approximately \$3.5 billion, which represent approximately 2.4 percent of market deposits. TCF operates the 10th largest depository institution in that market, controlling deposits of approximately \$3.2 billion, which represent approximately 2.2 percent of market deposits. On consummation of the proposal, Chemical would become the seventh largest depository organization in the market, controlling deposits of approximately \$6.7 billion, which represent approximately 4.6 percent of market deposits. The HHI for the Detroit market would increase by 11 points to 1449, and 52 competitors would remain in the market.

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

²² To effect the transaction, each share of TCF common stock would be converted into a right to receive shares of Chemical common stock, based on an exchange ratio. Any fractional shares of Chemical common stock that would result from this conversion would be exchanged for cash. In addition, each share of TCF preferred stock would be converted into the right to receive one share of a newly created series of Chemical preferred stock. Chemical has the financial resources to effect the proposed transaction.

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

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

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

The Board also has considered Chemical's plans for implementing the proposal. Chemical and TCF have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. In general, Chemical would implement risk-management policies, procedures, and controls at the combined organization. In addition, management of Chemical and TCF have the experience and resources to operate the combined organization in a safe and sound manner, and Chemical plans to integrate TCF's existing management and personnel in a manner that augments Chemical's management.²³

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

Convenience and Needs Considerations

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

²³ Following consummation of the holding company merger, the board of directors of the resulting holding company would be composed of 16 directors, with eight directors designated by each of Chemical and TCF. The chairman, president, and chief executive officer of TCF would become the chief executive officer of the surviving holding company and bank.

²⁴ 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 2901(b).

needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.²⁶

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Chemical Bank and TCF Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Chicago (“Reserve Bank”), the OCC, and the Consumer Financial Protection Bureau (“CFPB”); confidential supervisory information; information provided by Chemical; and the public comments on the proposal.

Public Comments on the Proposal

The Board received several comments in support of, and three adverse comments on, the proposal. In general, the commenters in support of the proposal believed that Chemical and TCF have a demonstrated record of providing valuable services to their communities.

Of the commenters that opposed the proposal, one commenter alleged disparities in Chemical Bank’s home mortgage origination and denial rates in the Detroit–Warren–Dearborn, Michigan Metropolitan Statistical Area (“Detroit MSA”) for minority applicants compared to white applicants, based on data reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”) for 2017.²⁷

Two commenters requested that the application include a forward-looking community benefits plan detailing how Chemical would address CRA-related concerns identified by the commenters.²⁸ One of these commenters expressed concerns about the small business lending record of TCF Bank and access to TCF Bank’s branches in LMI and majority-minority areas in Milwaukee County, Wisconsin (“Milwaukee”).²⁹ This commenter also expressed concerns about the fees charged by TCF Bank, specifically alleging that the fees charged to customers in Milwaukee on checking and savings accounts were high and unjustified. In addition, this commenter expressed concerns that TCF Bank does not originate home loans—which the commenter defines to include home purchase, home repair, and

²⁶ 12 U.S.C. § 2903.

²⁷ 12 U.S.C. § 2901 *et seq.* The commenter also noted an ongoing private securities lawsuit against TCF related to the merger. Shareholder litigation is a matter of general corporate law to be adjudicated by courts of competent jurisdiction. See *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

²⁸ The Board consistently has found that neither the CRA nor the federal banking agencies’ CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. See, e.g., *Fifth Third Bancorp*, FRB Order 2019-05 at 12 n.30 (March 6, 2019); *First Busey Corporation*, FRB Order 2019-01 at 11 n.30 (January 10, 2019); *HarborOne Mutual Bancshares*, FRB Order No. 2018-18 at 10 n.26 (September 12, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *Howard Bancorp, Inc.*, FRB Order No. 2018-05 at 9 n.21 (February 12, 2018); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas (“AAs”).

²⁹ This commenter focused on TCF Bank’s activities in Milwaukee, noting that Chemical Bank does not have a presence in Wisconsin.

refinance loans—to minority borrowers in the same proportions as they are represented in Milwaukee’s population.³⁰

Another commenter criticized both banks’ records of lending to small businesses in several AAs and alleged that the combined bank would have a low number of branches in majority-minority areas. This commenter expressed concerns about Chemical Bank’s record of home purchase lending in the Detroit–Dearborn–Livonia, Michigan Metropolitan Division (“Detroit MD”) and the Cleveland–Elyria, Ohio MSA (“Cleveland MSA”), based on HMDA data reported for the years 2015 through 2017. The commenter also raised concerns about TCF Bank’s record of community development loans and investments.

Businesses of the Involved Institutions and Response to the Public Comments

Chemical Bank operates through a network of branches located primarily in Michigan, Northeast Ohio, and Northern Indiana and offers commercial, retail, and fiduciary banking services, as well as insurance, investment, and wealth management services. These products and services include a wide range of deposit products, such as checking and savings accounts, commercial and consumer loans, and commercial and residential real estate lending.

TCF Bank provides commercial and retail banking services on a nationwide basis, including checking and savings accounts; credit and debit cards; check cashing and remittance services; and residential mortgage, consumer, and small business lending. Additionally, TCF Bank provides wholesale banking and enterprise services, such as commercial banking, leasing, and financing, and corporate treasury functions.

In response to the commenter’s allegations that Chemical Bank disproportionately denied home purchase loans to African American applicants as compared to white applicants in the Detroit MSA, Chemical represents that the data from that MSA demonstrate that Chemical Bank approved and originated conventional home purchase loan applications at similar rates regardless of an applicant’s race. Chemical also represents that Chemical Bank’s denial rates for applicants were similar to, or less than, peer institutions in the city of Detroit and the Detroit MSA, including in majority-minority tracts in those areas.

In response to allegations about the home purchase lending record of Chemical Bank, Chemical notes that during the bank’s most recent CRA performance examination, examiners determined that Chemical Bank had an adequate distribution of HMDA-reportable loans based on the bank’s lending in LMI census tracts and that Chemical Bank’s HMDA-reportable home purchase lending performance exceeded that of aggregate lenders in a number of respects in areas referenced by the commenter. In addition, Chemical represents that Chemical Bank monitors lending by racial composition of the census tracts in high minority areas of the bank’s AAs to identify lending patterns and create fair lending initiatives, as needed, and ensure the bank remains focused on increasing lending to minority borrowers and in minority tracts through increased CRA activities, branch distribution, and a designated Fair Lending Marketing Plan. Chemical also represents that the combined organization intends to merge the fair lending program of TCF Bank and Chemical Bank and adopt the best practices from each bank’s processes, policies, and procedures.

³⁰ The commenter also encouraged Chemical to collaborate with local community organizations in Milwaukee to improve banking services. This commenter provided a list of suggestions to increase lending activity to LMI individuals and neighborhoods and minority individuals and neighborhoods in Milwaukee.

In response to commenters' allegations about Chemical Bank's and TCF Bank's small business lending records, Chemical notes that the banks' most recent CRA performance evaluations found that Chemical Bank exhibited a good record of serving the credit needs of very small businesses and TCF Bank exhibited a good distribution of small business loans. In addition, Chemical states that TCF Bank's geographic distribution of small business loans was found to be excellent in the state of Wisconsin, which includes Milwaukee, an area of concern for a commenter, and Chemical highlights additional small business lending since the bank's most recent CRA performance evaluation. Chemical also states that it is committed to small business lending, and it expects that the combined organization's small business lending performance will reflect the strong record of both banks. Additionally, Chemical cites community service, outreach events, and minority-specific advertisement campaigns as evidence of efforts to increase minority lending.

In response to a commenter's allegations about TCF Bank's level of community development lending and investment, Chemical notes that TCF Bank received an overall "High Satisfactory" CRA rating for the Investment Test in the bank's most recent CRA performance evaluation and cites to examiners' conclusions about TCF Bank's community development lending activities. Chemical represents that TCF Bank has invested in a number of local community partnerships and maintains an active dialogue with community organizations, using input they provide to enhance the bank's CRA program and products and services targeted to the needs of LMI individuals and geographies.

In response to a commenter's allegations about TCF Bank's fees, Chemical represents that it does not expect any material discontinuations in products or services or material increases in customer fees resulting from the proposed transaction. Chemical notes that TCF Bank resolves customer concerns in ways that meet customers' needs and states that the combined organization would implement an integrated complaint management system. With respect to branching concerns, Chemical asserts that each bank routinely evaluates the CRA and fair lending impacts of their branch networks, and that the combined bank would continue this practice.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisors, which in this case are the Reserve Bank for Chemical Bank and the OCC for TCF Bank.³¹ In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³² An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Chemical Bank and TCF Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates

³¹ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³² 12 U.S.C. § 2906.

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 CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. An institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³³ (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 Investment Test applicable to large institutions evaluates the number and amounts of qualified investments that benefit their AAs, and the Service Test evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.³⁴

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.³⁵ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of the institution.

CRA Performance of Chemical Bank

Chemical Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of September 18, 2017 ("Chemical Bank Evaluation").³⁶ The bank received "High Satisfactory" ratings for the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.³⁷

³³ 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).

³⁴ 12 CFR 228.21 *et seq.*

³⁵ Other information relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁶ The Chemical Bank Evaluation was conducted using Large Bank CRA Examination Procedures. For AAs that were unchanged from the prior evaluation, examiners reviewed home mortgage lending activity under HMDA and small business loans originated from 2015 through 2016. The evaluation period for community development loans, investments, and services was October 27, 2015, through September 18, 2017, for AAs that were unchanged from the prior evaluation. Examiners evaluated new AAs associated with the acquisition of Talmer Bancorp., Inc., for 2016 for CRA and HMDA-reportable data. For the new AAs, the evaluation period for community development activities was January 1, 2016, through September 18, 2017.

³⁷ The Chemical Bank Evaluation included full-scope evaluations of the South Bend-Mishawaka, Indiana-Michigan Multi-State MSA; the Elkhart-Goshen, Indiana MSA; the Ann Arbor, Michigan MSA; the Battle Creek, Michigan MSA; the Detroit MD; the Flint, Michigan MSA; the Grand Rapids-Wyoming, Michigan MSA; the Midland, Michigan MSA; the South Bend-Mishawaka, Indiana-Michigan MSA; the Warren-Troy-

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

In Michigan, Chemical Bank's performance under the Lending Test was rated "High Satisfactory." In the Detroit MD, an area of concern for a commenter, examiners found excellent loan penetration and adequate penetration among borrowers of different income levels.³⁸ In addition, examiners noted Chemical Bank's high level of community development loans and good record of serving the credit needs of very small businesses and of low-income individuals and areas in the Detroit MD. Moreover, examiners found that Chemical Bank outperformed peer institutions in making home purchase loans in LMI census tracts in the Detroit MD.

In Ohio, Chemical Bank's performance under the Lending Test was rated "High Satisfactory." In the Cleveland MSA, an area of concern to a commenter, examiners found that the bank's rate of lending exceeded aggregate lenders in penetration of LMI census tracts with respect to home purchase loans in 2016.

Examiners found that Chemical Bank made a significant level of qualified community development investments and grants and exhibited excellent responsiveness to credit and community development needs in its AAs. In addition, examiners noted that the bank's recent use of federal tax credits for affordable housing initiatives was innovative.

Examiners found that the bank's retail delivery systems were reasonably accessible to all geographies and individuals of different income levels. Examiners also found that the bank's services did not vary in a way that inconvenienced geographies or individuals, particularly LMI geographies and individuals. In addition, examiners noted that the bank provided a high level of community development services throughout its AAs.

Chemical's Efforts since the Chemical Bank Evaluation

Chemical states that, since the Chemical Bank Evaluation, Chemical Bank has continued to originate a substantial number of mortgage and consumer loans to LMI borrowers and has made significant community investments. Chemical represents that the bank has originated a significant number of small business and farm loans, including in LMI census tracts across the bank's AAs. Chemical also represents that Chemical Bank has originated a significant number of community development loans.

In the Detroit MD, an area of concern for commenters, Chemical asserts that Chemical Bank has originated a significant number of mortgage loans to LMI individuals and families and within LMI neighborhoods since the Chemical Bank Evaluation. Chemical represents that it has originated small business loans to small businesses and within LMI communities in the Detroit MD. In addition, Chemical states that Chemical Bank joined a

Farmington Hills, Michigan MSA; the North Michigan, Non-MSA; the Cleveland MSA; and the Youngstown–Warren–Boardman Ohio–Pennsylvania MSA. Limited-scope evaluations were conducted in the bank's remaining AAs.

³⁸ At the time of the Chemical Bank Evaluation, the Detroit MD was a new AA for Chemical Bank, with the bank having entered that market in 2016 with its acquisition of Talmer Bancorp, Inc. See *supra* note 36.

home mortgage program dedicated to helping homebuyers purchase and rehabilitate homes in the City of Detroit.

In the Cleveland MSA, Chemical contends that Chemical Bank has originated a significant amount and number of small business loans to small businesses and within LMI communities since the Chemical Bank Evaluation. In addition, Chemical represents that Chemical Bank has made additional mortgage loans to LMI individuals and invested in and lent to various community development initiatives in the Cleveland MSA.

CRA Performance of TCF Bank

TCF Bank was assigned an overall “Outstanding” rating at its most recent CRA performance evaluation by the OCC, as of December 31, 2016 (“TCF Bank Evaluation”).³⁹ The bank received an “Outstanding” rating for the Lending Test and “High Satisfactory” ratings for the Investment Test and Service Test.⁴⁰

Examiners found that the bank’s overall lending activity was good and that the bank’s community development lending activities reflected good responsiveness to the credit needs of the bank’s AAs. Examiners noted that the bank’s loan program reflected excellent geographic and borrower income distribution and found that the bank made use of innovative and flexible lending initiatives, including hardship modifications, in serving credit needs. Examiners also found that, overall, the bank’s community development lending had a positive impact on the bank’s performance on the Lending Test, and that these activities were responsive to the credit needs of the bank’s AAs.

In Wisconsin, TCF Bank’s overall lending performance was rated “Outstanding,” and its overall lending performance in the Milwaukee AA, an area of concern for a commenter, was found to be excellent, with excellent geographic and borrower income distributions for home mortgage loans. However, examiners found that the bank’s volume of loans to small businesses was poor compared to peer institutions.

Examiners found that TCF Bank had an overall good level of qualified investments and that the investments were responsive to community needs. In addition, examiners found that the bank’s branches were accessible to essentially all portions of the bank’s AAs and that there were no significant differences between branch hours, which overall were found to be good. Examiners noted that TCF Bank provided adequate levels of community development services and that the bank offered a variety of services targeted to unbanked and underbanked customers throughout its AAs.

³⁹ The TCF Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed data for the Lending Test from January 1, 2012, through December 31, 2016 (except the Champaign–Urbana MSA, where examiners reviewed data from January 1, 2012, through December 31, 2015). For the Investment and Service Tests and community development loans, examiners reviewed data from January 1, 2012, through August 6, 2017 (except the Champaign–Urbana MSA, where examiners reviewed data from January 1, 2012, through December 31, 2015). For the Chicago–Naperville–Elgin Illinois–Indiana–Wisconsin Multistate Metropolitan Area (“Chicago AA”) and Minneapolis–St. Paul–Bloomington, Minnesota MSA (“Minneapolis AA”), examiners conducted separate analyses of 2015 and 2016 data due to changes resulting from the 2014 Office of Management and Budget geographic boundary revisions.

As part of the TCF Bank Evaluation, examiners cited evidence of two violations of the Servicemember Civil Relief Act (“SCRA”) but indicated that TCF Bank had appropriately remedied the situation and improved its SCRA policies, procedures, and controls. Accordingly, examiners did not lower the CRA performance of TCF Bank as a result of this finding.

⁴⁰ The TCF Bank Evaluation included full-scope evaluations of the Chicago AA; the Minneapolis AA; the St. Cloud, Minnesota MSA; the Detroit MSA; the Colorado Springs, Colorado MSA; the Denver–Aurora–Lakewood, Colorado MSA; the Milwaukee–Waukesha–West Allis, Wisconsin MSA (“Milwaukee AA”); the Phoenix–Mesa–Scottsdale, Arizona MSA; the Sioux Falls, South Dakota MSA; and the Champaign–Urbana, Illinois MSA. Limited-scope evaluations were performed in the bank’s remaining AAs.

TCF's Efforts since the TCF Bank Evaluation

Chemical states that, since the TCF Bank Evaluation, TCF Bank has augmented its community development initiatives by centralizing community development activities and appointing new management. The bank has established and met enhanced community development lending goals and increased philanthropic grants and investments throughout its AAs. Chemical also represents that TCF Bank has continued to participate in and operate various financial literacy initiatives and has increased its small business lending efforts, including in areas of interest to the commenters.

Additional Supervisory Views

In its review of the proposal, the Board reviewed the consumer compliance and fair lending records of Chemical Bank and consulted with the OCC regarding the CRA, consumer compliance, and fair lending records of TCF Bank. The OCC reviewed and approved the Bank Merger Act application related to the proposal and, in doing so, considered timely adverse comments that were submitted to the Board on the BHC Act application. The Board has considered the results of the most recent consumer compliance examinations of Chemical Bank and TCF Bank, which included a review of the banks' compliance management programs and compliance with consumer protection laws and regulations, and considered Chemical Bank's supervisory record with the CFPB.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Chemical represents that, following the proposed transaction, the combined bank would retain the full range of products and services currently offered by Chemical Bank and TCF Bank. Chemical notes that customers of TCF Bank would gain access to enhanced products and services, including, among others, Chemical Bank's tax credit lending services and small business and agricultural lending programs. In addition, Chemical represents that customers of Chemical Bank would benefit by receiving access to, among other products and services, TCF Bank's nationwide home equity lines of credit and commercial finance lending, retail banking, and credit card agency services. Chemical represents that customers of both banks would benefit from a larger branch and ATM network and greater capital resources.

Chemical represents that the combined bank would continue to utilize the current products, programs, and procedures of TCF Bank, in addition to those adopted from Chemical Bank, to meet the bank's obligations under the CRA. Chemical further represents that it would work with existing partners of Chemical Bank and TCF Bank, including community groups, to achieve the combined bank's CRA and fair lending goals.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory views of the Reserve Bank, OCC, and CFPB; confidential supervisory information; information provided by Chemical; the public comments on the proposal; and other potential effects of the proposal on the convenience and needs

of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

Financial Stability

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

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the 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 total assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁴

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

⁴¹ 12 U.S.C. § 1842(c)(7).

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

⁴³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 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 Chemical and TCF both offer a range of retail and commercial banking products and services. Chemical has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.⁴⁶ 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 Chemical with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective July 16, 2019.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁴⁶ A commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities in connection with this application. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all of the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted 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 written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Hancock Whitney Corporation Gulfport, Mississippi

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2019-12 (September 5, 2019)

Hancock Whitney Corporation (“Hancock Whitney”), Gulfport, Mississippi, 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 MidSouth Bancorp, Inc. (“MidSouth”) and thereby indirectly acquire MidSouth’s national bank subsidiary, MidSouth Bank, National Association (“MidSouth Bank”), both of Lafayette, Louisiana. Following the proposed acquisition, MidSouth Bank would be merged into Hancock Whitney’s state nonmember bank subsidiary, Hancock Whitney Bank, Gulfport, Mississippi.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 27,117 (June 11, 2019)).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.

Hancock Whitney, with consolidated assets of approximately \$28.8 billion, is the 69th largest insured depository organization in the United States. Hancock Whitney controls approximately \$23.4 billion in consolidated deposits, which represent approximately 0.2 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Hancock Whitney controls Hancock Whitney Bank, which operates in Alabama, Florida, Louisiana, Mississippi, and Texas. Hancock Whitney is the 3rd largest insured depository organization in Louisiana, controlling deposits of approximately \$13.0 billion, which represent 12.5 percent of the total deposits of insured depository institutions in that state. Hancock Whitney is the 93rd largest insured depository organization in Texas, controlling deposits of \$697.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

MidSouth, with consolidated assets of approximately \$1.7 billion, is the 471st largest insured depository organization in the United States. MidSouth controls approximately \$1.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MidSouth controls MidSouth Bank, which operates in Louisiana and Texas. MidSouth is the 13th largest insured depository organization in Louisiana, controlling deposits of approximately \$1.3 billion, which represent 1.3 percent of the total deposits of insured depository institutions in that state. MidSouth is the 212th largest insured depository organization in Texas, controlling deposits of approximately \$240.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

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

⁴ 12 CFR 262.3(b).

⁵ National asset data are as of June 30, 2019, and national deposit, ranking, and market-share data are as of March 31, 2019, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

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

On consummation of the proposal, Hancock Whitney would become the 68th largest insured depository organization in the United States, with consolidated assets of approximately \$30.4 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Hancock Whitney would control total consolidated deposits of approximately \$24.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Louisiana, Hancock Whitney would remain the 3rd largest insured depository organization, controlling deposits of approximately \$14.3 billion, which represent 13.8 percent of the total deposits of insured depository institutions in the state. In Texas, Hancock Whitney would become the 76th largest insured depository organization, controlling deposits of approximately \$938.4 million, which represent less than 1 percent of total deposits of insured depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.⁷ Section 3(d) also provides that the Board (1) may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years;⁸ (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 (“CRA”)⁹ and the applicant’s record of compliance with applicable state community reinvestment laws;¹⁰ and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States¹¹ or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹²

For purposes of the BHC Act, the home state of Hancock Whitney is Mississippi, and MidSouth Bank is located in Louisiana and Texas. Hancock Whitney is well capitalized and well managed under applicable law. MidSouth Bank has been in existence for more than five years, and Hancock Whitney Bank has a “Satisfactory” rating under the CRA.

On consummation of the proposed transaction, Hancock Whitney would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Louisiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control, and Hancock Whitney’s percentage of deposits would not exceed 30 percent of the total amount of

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

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 2901 *et seq.*

¹⁰ 12 U.S.C. § 1842(d)(3).

¹¹ 12 U.S.C. § 1842(d)(2)(A).

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

in-state deposits. Texas imposes a 20 percent limit on the total amount of in-state deposits that a single banking organization may control.¹³ In Texas, the combined organization would control less than 20 percent of the total amount of in-state deposits. The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

Competitive Considerations

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

Hancock Whitney Bank and MidSouth Bank compete directly in the Baton Rouge Area, Louisiana, banking market (“Baton Rouge market”); the Houma/Thibodaux Area, Louisiana, banking market (“Houma/Thibodaux market”); the Lafayette Area, Louisiana, banking market (“Lafayette market”); the Lake Charles Area, Louisiana, banking market (“Lake Charles market”); the Morgan City Area, Louisiana, banking market (“Morgan City market”); the Beaumont-Port Arthur, Texas, banking market (“Beaumont-Port Arthur market”); and the Houston, Texas, banking market (“Houston market”).¹⁶ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in each market (“market deposits”) that Hancock Whitney would control;¹⁷ the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁸ the number of competitors that would remain in each market; and other characteristics of each market.

¹³ Tex. Fin. Code Ann. § 203.004(a).

¹⁴ 12 U.S.C. § 1842(c)(1)(A).

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

¹⁶ The Baton Rouge market is defined as Ascension, Assumption (northern half), East Baton Rouge, Iberville, Livingston, Saint James, and West Baton Rouge parishes. The Houma/Thibodaux market is defined as Lafourche and Terrebonne parishes. The Lafayette market is defined as Acadia, Iberia, Lafayette, Saint Landry, Saint Martin, and Vermilion parishes. The Lake Charles market is defined as Beauregard, Calcasieu, and Cameron parishes. The Morgan City market is defined as Assumption (southern half) and Saint Mary parishes. The Beaumont-Port Arthur market is defined as Hardin, Jefferson, and Orange counties. The Houston market is defined as Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties.

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

¹⁸ 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 in the Baton Rouge market, the Houma/Thibodaux market, the Lafayette market, the Lake Charles market, the Morgan City market, the Beaumont-Port Arthur market, and the Houston market. On consummation of the proposal, the Baton Rouge market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines; however, the change in HHI would be small and numerous competitors would remain in the market.¹⁹ Similarly, the Houston market²⁰ and the Morgan City market²¹ would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and several competitors would remain in the market. There would be no change in the HHI in the Houston market, and the change in the HHI in the Morgan City market would be less than 200 points. The Houma/Thibodaux, Lafayette, Lake Charles, and Beaumont-Port Arthur markets would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Houma/Thibodaux market would be small, and numerous competitors would remain in the market.²² The change in the HHI in the Lafayette market would be less than 100 points, and 37 competitors would remain in the market.²³ The change in the HHI in the Lake Charles market would be less than 50 points, and 17 competitors would remain in the market.²⁴ The HHI in the

¹⁹ Hancock Whitney operates the 3rd largest depository institution in the Baton Rouge market, controlling approximately \$2.7 billion in deposits, which represent 14.0 percent of market deposits. MidSouth operates the 18th largest depository institution in the same market, controlling deposits of approximately \$71.6 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Hancock Whitney would remain the 3rd largest depository organization in the market, controlling deposits of approximately \$2.8 billion, which represent approximately 14.4 percent of market deposits. The HHI for the Baton Rouge market would increase by 10 points to 1968, and 33 competitors would remain in the market.

²⁰ Hancock Whitney operates the 26th largest depository institution in the Houston market, controlling approximately \$697.9 million in deposits, which represent less than 1 percent of market deposits. MidSouth operates the 77th largest depository institution in the same market, controlling deposits of approximately \$36.7 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Hancock Whitney would remain the 26th largest depository organization in the market, controlling deposits of approximately \$734.7 million, which represent less than 1 percent of market deposits. The HHI for the Houston market would remain unchanged at 2148 points, and 90 competitors would remain in the market.

²¹ Hancock Whitney operates the largest depository institution in the Morgan City market, controlling approximately \$278.9 million in deposits, which represent 27.8 percent of market deposits. MidSouth operates the 8th largest depository institution in the same market, controlling deposits of approximately \$34.7 million, which represent approximately 3.5 percent of market deposits. On consummation of the proposed transaction, Hancock Whitney would remain the largest depository organization in the market, controlling deposits of approximately \$313.7 million, which represent approximately 31.3 percent of market deposits. The HHI for the Morgan City market would increase by 192 points to 2011 points, and seven competitors would remain in the market.

²² Hancock Whitney operates the 3rd largest depository institution in the Houma/Thibodaux market, controlling approximately \$517.4 million in deposits, which represent 11.9 percent of market deposits. MidSouth operates the 14th largest depository institution in the same market, controlling deposits of approximately \$16.5 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Hancock Whitney would remain the 3rd largest depository organization in the market, controlling deposits of approximately \$533.8 million, which represent approximately 12.2 percent of market deposits. The HHI for the Houma/Thibodaux market would increase slightly by 9 points to 1258 points, and 14 competitors would remain in the market.

²³ Hancock Whitney operates the 5th largest depository institution in the Lafayette market, controlling approximately \$795.5 million in deposits, which represent 6.2 percent of market deposits. MidSouth operates the 4th largest depository institution in the same market, controlling deposits of approximately \$815.2 million, which represent approximately 6.4 percent of market deposits. On consummation of the proposed transaction, Hancock Whitney would become the 3rd largest depository organization in the market, controlling deposits of approximately \$1.6 billion, which represent approximately 12.6 percent of market deposits. The HHI for the Lafayette market would increase slightly by 79 points to 1136 points.

²⁴ Hancock Whitney operates the 4th largest depository institution in the Lake Charles market, controlling approximately \$459.6 million in deposits, which represent 11.6 percent of market deposits. MidSouth operates the 10th largest depository institution in the same market, controlling deposits of approximately \$79.0 million, which represent approximately 2.0 percent of market deposits. On consummation of the proposed transaction, Hancock Whitney would remain the 4th largest depository organization in the market, controlling deposits of approximately \$538.6 million, which represent approximately 13.6 percent of market deposits. The HHI for the Lake Charles market would increase slightly by 47 points to 1344 points.

Beaumont-Port Arthur market would remain unchanged, and 18 competitors would remain in the market.²⁵

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

Based on all of the facts of record, the Board determines that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Baton Rouge, Houma/Thibodaux, Lafayette, Lake Charles, Morgan City, Beaumont-Port Arthur, and Houston 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, as well as the effectiveness of the institutions in combatting money laundering.²⁶ 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.

Hancock Whitney, MidSouth, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured primarily as a stock exchange, with a subsequent merger of the subsidiary depository institutions.²⁷ The asset quality, earnings, and liquidity of Hancock Whitney are consistent with approval, and Hancock Whitney appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

²⁵ Hancock Whitney is not currently reporting deposits in the Beaumont-Port Arthur market. The company maintains one branch in the market, but it does not appear to have a traditional retail storefront presence. MidSouth operates the 10th largest depository institution in this market, controlling approximately \$92.3 million in deposits, which represent 1.8 percent of market deposits. On consummation of the proposal, Hancock Whitney would become the 10th largest depository institution in the market, controlling \$92.3 million in deposits, which represent 1.8 percent of market deposits.

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

²⁷ To effect the transaction, each share of MidSouth common stock would be converted into a right to receive shares of Hancock Whitney common stock, based on an exchange ratio.

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 Hancock Whitney, MidSouth, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Hancock Whitney; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

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

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

Based on all of the facts of record, including Hancock Whitney's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the record of effectiveness of Hancock Whitney 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.²⁸ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal 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,²⁹ 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.³⁰

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide appli-

²⁸ 12 U.S.C. § 1842(c)(2).

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

cants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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

Public Comments on the Proposal

The Board received two public comments on the proposal. One commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Hancock Whitney Bank to, and in the rate of denials for home mortgage applications from, African Americans and Hispanics as compared to whites in New Orleans, based on 2017 data that Hancock Whitney reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").³¹ Another commenter expressed concerns with Hancock Whitney's home mortgage lending in New Orleans, East Baton Rouge, Gulfport, and Houston. The commenter also expressed concerns with Hancock Whitney's small business lending in Houston. This commenter further suggested that approval of Hancock Whitney's application should be conditioned upon an expanded action plan, or a community benefits agreement, that would address shortcomings in Hancock Whitney Bank's CRA performance.³²

Businesses of the Involved Institutions and Response to the Public Comments

Through its network of branches in Alabama, Florida, Louisiana, Mississippi, and Texas, Hancock Whitney Bank offers a variety of products and services, including traditional and online banking, commercial and small business banking, energy banking, private banking, trust and investment services, certain insurance services, mortgage services, and consumer financing. MidSouth Bank, through its branches in Louisiana and Texas, focuses primarily on commercial and consumer loans and deposit services to small- and middle-market businesses.

In response to the public comments, Hancock Whitney asserts that approval of the proposed transaction is warranted based on Hancock Whitney Bank's CRA performance. Hancock Whitney notes that the bank received an overall "Satisfactory" rating on its most recent CRA performance evaluation and satisfactory ratings in each state with cities

³¹ 12 U.S.C. § 2801 *et seq.*

³² The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. *See, e.g., Fifth Third Bancorp*, FRB Order 2019-05 at 12 n.30 (March 6, 2019); *First Busey Corporation*, FRB Order 2019-01 at 11 n.30 (January 10, 2019); *HarborOne Mutual Bancshares*, FRB Order No. 2018-18 at 10 n.26 (September 12, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *Howard Bancorp, Inc.*, FRB Order No. 2018-05 at 9 n.21 (February 12, 2018); *Huntington Bancshares Inc.*, FRB Order No. 2016-13 at 32 n.50 (July 29, 2016); *CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); *Fifth Third Bancorp*, 80 *Federal Reserve Bulletin* 838, 841 (1994). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas ("AAs").

on which the commenters focused. Hancock Whitney also emphasizes that, according to the most recent CRA performance evaluation, examiners did not identify any evidence of discriminatory or other illegal credit practices that were, as a whole, inconsistent with helping to meet community credit needs. Moreover, Hancock Whitney represents that Hancock Whitney Bank has formed a community advisory council with representatives from housing and small business non-profit organizations to provide input and feedback on community needs.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of relevant federal supervisors, which in this case are the FDIC with respect to Hancock Whitney Bank and the OCC with respect to MidSouth Bank.³³ In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁴ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Hancock Whitney Bank and MidSouth Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁵ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.³⁶ The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs,

³³ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48,506, 48,548 (July 25, 2016).

³⁴ 12 U.S.C. § 2906.

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

³⁶ See 12 CFR 228.22(b).

and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.³⁷

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.³⁸ Consequently, the Board evaluates such data disparities in the context of other information regarding the lending record of an institution.

CRA Performance of Hancock Whitney Bank

Hancock Whitney Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 22, 2018 ("Hancock Whitney Bank Evaluation").³⁹ The bank received "High Satisfactory" ratings on the Lending Test and the Service Test and an "Outstanding" rating on the Investment Test.⁴⁰

Examiners found that Hancock Whitney Bank exhibited excellent lending activity and made a substantial majority of its loans within its AAs. Examiners determined that the bank's borrower profile revealed good penetration among retail customers of different income levels and businesses of different revenue sizes. In addition, examiners found that the geographic distribution of the bank's loans reflected adequate penetration throughout the bank's AAs. Examiners also found that the bank established a relatively high level of community development loans, although made limited use of innovative or flexible lending practices.

Examiners determined that Hancock Whitney Bank exhibited excellent investment activity. In particular, examiners found that the bank's community development activities showed excellent responsiveness and that the bank partnered with organizations to set up business information and technology training centers that improve financial literacy for LMI individuals and small business owners. Examiners also noted that the bank made occasional use of complex qualified investments but did not use innovative qualified investments.

Examiners found that Hancock Whitney Bank exhibited an adequate record of providing retail banking services. Examiners noted that the bank's branch distribution provided reasonable accessibility to essentially all portions of the bank's AAs, including to LMI individuals. Examiners made the same finding with respect to the bank's alternative delivery systems, noting that the bank provided reasonably accessible ATMs and alternative delivery systems to LMI individuals.

Hancock Whitney Bank's overall "Satisfactory" rating is consistent with the ratings of the bank's CRA performance in New Orleans, East Baton Rouge, Gulfport, and Houston,

³⁷ See 12 CFR 228.21 *et seq.*

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

³⁹ The Hancock Whitney Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage loans from January 1, 2016, to December 31, 2017. They reviewed small business loans and small farm loans from January 1, 2016, to June 30, 2018. In addition, examiners considered the community development loans originated by Hancock Whitney Bank between September 21, 2015, and October 22, 2018.

⁴⁰ The Hancock Whitney Bank Evaluation reviewed the bank's activities in each of its 24 AAs throughout Alabama, Florida, Louisiana, Mississippi, and Texas.

areas of concern to the commenters. The bank received an overall “Satisfactory” rating in Louisiana, with “High Satisfactory” ratings on the Lending Test and the Service Test and an “Outstanding” rating on the Investment Test. Examiners noted that, in Louisiana, the bank had an excellent record of lending activity and of community development investments, and provided a relatively high level of community development services, but made limited use of innovative or flexible lending practices.

Examiners found Hancock Whitney Bank’s CRA performance in the Baton Rouge Metropolitan Statistical Area (“MSA”) AA to be consistent with the bank’s performance in the state as a whole. Examiners determined that the distribution of small business loans by borrower revenue size was excellent while the distribution of home mortgage loans by borrower income level reflected adequate performance in the AA. Examiners also concluded that the geographic distribution of small business loans and home mortgage loans reflected adequate performance in the AA.

Examiners similarly found Hancock Whitney Bank’s CRA performance in the New Orleans-Metairie MSA AA to be consistent with the bank’s statewide performance. Examiners determined that the distribution of small business loans by borrower revenue size was excellent while the distribution of home mortgage loans by borrower income level reflected adequate performance in the AA. Examiners also determined that the geographic distribution of small business loans and home mortgage loans reflected adequate performance in the AA.

In Mississippi, Hancock Whitney Bank received an overall “Satisfactory” rating, with “High Satisfactory” ratings on the Lending Test and the Service Test and an “Outstanding” rating on the Investment Test. Examiners determined that the bank had an excellent record of lending activity and an excellent level of qualified investments. Examiners found that the bank made an adequate level of community development loans and limited use of innovative or flexible lending practices. Examiners determined that, within the Gulfport-Biloxi-Pascagoula MSA AA, the distribution of small business loans by borrower revenue size was excellent while the distribution of home mortgage loans by borrower income level was adequate. Examiners noted that the geographic distribution of small business loans and home mortgage loans in the AA was adequate.

In Texas, Hancock Whitney Bank received an overall “Satisfactory” rating, with “High Satisfactory” ratings on the Investment Test and the Service Test and a “Low Satisfactory” rating on the Lending Test. Examiners noted that the bank had an adequate record of lending activity, made a significant level of qualified investments, and was a leader in providing community development services, although made limited use of innovative or flexible lending practices. In the Houston-The Woodlands-Sugar Land MSA AA, examiners determined that the distribution of small business loans by borrower revenue size reflected adequate performance while the distribution of home mortgage loans by borrower income level reflected good performance. Similarly, examiners found that the geographic distribution of small business loans reflected adequate performance while the distribution of home mortgage loans reflected good performance.

Hancock Whitney Bank’s Efforts since the Hancock Whitney Bank Evaluation

Hancock Whitney states that, since the Hancock Whitney Bank Evaluation, the bank has continued to originate a substantial number of mortgage and consumer loans to LMI borrowers and has made significant community investments. Hancock Whitney represents that the bank has originated a significant number of small business and farm loans, including in LMI census tracts across the bank’s AAs. Hancock Whitney also represents that the bank has originated a significant number of community development loans.

CRA Performance of MidSouth Bank

MidSouth Bank received an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the OCC, as of February 26, 2018 (“MidSouth Bank Evaluation”).⁴¹ The bank received “High Satisfactory” ratings for the Lending Test and the Service Test and a “Low Satisfactory” rating for the Investment Test.⁴²

Examiners concluded that MidSouth Bank’s lending performance reflected good responsiveness to the credit needs in the bank’s AAs and that a good proportion of loans were originated in the bank’s AAs. Examiners found that the geographic distribution of the bank’s loans in the bank’s AAs was good and the distribution of loans by borrower income level was adequate. Examiners noted that the bank had an adequate level of qualified community development investments and was responsive to credit and community economic development needs. Finally, examiners found the bank’s delivery systems to be accessible to census tracts and individuals of different income levels in the AAs, including in LMI areas and to LMI individuals.

Additional Supervisory Views

The Board has consulted with the FDIC regarding Hancock Whitney Bank’s CRA, consumer compliance, and fair lending records and with the OCC regarding MidSouth Bank’s CRA, consumer compliance, and fair lending records. The FDIC is considering the comments received by the Board in connection with its review of the bank merger application related to the proposal. The Board has considered the results of the FDIC’s most recent consumer compliance examination of Hancock Whitney Bank and the OCC’s most recent consumer compliance examination of MidSouth Bank, which included reviews of the banks’ compliance management programs and compliance with consumer protection laws and regulations. The Board also considered Hancock Whitney Bank’s supervisory record with the CFPB.

The Board has taken the foregoing consultations and examinations into account in evaluating the proposal, including in considering whether Hancock Whitney has the experience and resources to ensure that the combined bank would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Hancock Whitney represents that, following consummation of the proposal, existing customers of MidSouth Bank would benefit from the technical expertise and resources that Hancock Whitney Bank has developed. In addition, Hancock Whitney asserts that, as a result of the transaction, MidSouth Bank customers would have access to a broader network of branches and loan production offices, as well as enhanced online and mobile banking platforms and equipment finance specialists.

⁴¹ The MidSouth Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans from January 1, 2015, through December 31, 2016, except for community development loans, which were evaluated for the period October 6, 2014, through February 26, 2018.

⁴² The MidSouth Bank Evaluation reviewed the bank’s activities in each of the bank’s 16 AAs throughout Louisiana and Texas.

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

Financial Stability

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”⁴³

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴⁴ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.⁴⁵

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁶

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

⁴³ 12 U.S.C. § 1842(c)(7).

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

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

⁴⁶ 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.

cial banking activities.⁴⁷ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴⁸ 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 Hancock Whitney with all the conditions imposed in this order and on any commitments made to the Board in connection with the proposal. The Board's approval also is conditioned on receipt by Hancock Whitney of all required regulatory approvals. 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 Atlanta, acting under delegated authority.

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

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

Ann E. Misback
Secretary of the Board

⁴⁷ Hancock Whitney and MidSouth offer a broad array of retail and commercial banking products and services. Hancock Whitney has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

⁴⁸ One commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or bank to be acquired make a timely written recommendation of disapproval of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Order Issued Under Federal Reserve Act

Vista Bank
Ralls, Texas

*Order Approving the Establishment of a Branch
FRB Order No. 2019-13 (September 10, 2019)*

Vista Bank, a state member bank subsidiary of Vista Bancshares, Incorporated, both of Ralls, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")¹ and the Board's Regulation H² to establish a branch at 5840 West Northwest Highway, Dallas, Texas.³

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

Vista Bancshares, Incorporated, with total assets of \$803.6 million, is the 970th largest depository organization in the United States, controlling approximately \$734.3 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Vista Bank operates through 13 branches located in Texas, and the bank's main office is in Ralls, Texas.⁶

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

¹ 12 U.S.C. § 321.

² 12 CFR part 208.

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

⁴ 12 CFR 262.3(b).

⁵ Total assets, national asset ranking, and national deposit data are as of March 31, 2019, and state deposit data are as of June 30, 2018, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

⁶ In Texas, Vista Bank is the 96th largest depository organization, controlling approximately \$669.3 million in deposits, which represent approximately 0.1 percent of the total amount of deposits of insured depository institutions in that state.

⁷ 12 CFR 208.6(b).

⁸ 12 U.S.C. § 2901 *et seq.*

⁹ 12 CFR 208.21(a).

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Vista Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Vista Bank, and the comment received on the proposal. Vista Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Vista Bank are consistent with approval, and Vista 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 Vista Bank's proposed investment in the branch and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.¹⁰

In considering Vista 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 Vista Bank and the bank's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws. Vista Bank is considered to be well managed. Vista Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors, and the bank's risk-management program appears consistent with approval.

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

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹¹ In its evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹² and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank branching proposals.¹³

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

¹⁰ 12 CFR 208.21(a).

¹¹ 12 CFR 208.6(b)(3).

¹² 12 U.S.C. § 2901(b).

¹³ 12 U.S.C. § 2903.

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

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

Public Comment on the Proposal

One commenter objected to the proposal, alleging that Vista Bank discriminates against African Americans and “redlines” African American neighborhoods in Houston and Dallas, Texas.¹⁴ Specifically, the commenter alleged that Vista Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its branches in predominantly white neighborhoods and its banking services to white individuals and white-owned businesses in Houston and Dallas. The commenter also alleges that Vista Bank disfavors certain African American neighborhoods in Houston and Dallas with respect to its branching activities and in other respects. After the comment period ended, the commenter filed a second objection, noting that the proposed branch would not be located in an African-American neighborhood in Dallas and generally alleging that the claims of discrimination raised in the initial comment also apply to African American neighborhoods and census tracts in Lubbock, Texas, and other areas in which Vista Bank has branches.

Business of the Applicant and Response to Comment

Vista Bank offers a broad range of retail and commercial banking products to consumers and businesses through its network of branches. The products and services include commercial, real estate, agricultural, and consumer loans; personal checking and savings accounts; business checking and savings accounts; online banking; and treasury management services.

In responding to the commenter, Vista Bank notes that it does not have any branches in Houston or any full-service branches in Dallas.¹⁵ Vista Bank denies the commenter's allegations of discrimination and asserts that other allegations, such as that the bank denied “equal access to capital home equity loans” to African Americans, are clearly frivolous since the bank does not offer home equity loans to any customers. Vista Bank cites its satisfactory CRA examination record and asserts that the proposed branch would directly benefit the public by, among other things, promoting competition among financial service providers in the Dallas assessment area (“AA”). Vista Bank further represents that addi-

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

¹⁵ The commenter's claims of discrimination in branching and the provision of various products and services in Houston are without merit, since Vista Bank does not have operations in Houston. The commenter's claim of discrimination in branching and the provision of various products and services in Dallas also are unsubstantiated, as Vista Bank currently does not have any full-service branches in Dallas, and there is no evidence to suggest that the placement of the LDPO or the offering of products and services in Dallas is discriminatory. With respect to the commenter's claims that Vista Bank discriminates against African Americans in the provision of various products and services in Lubbock, Texas, and the other areas in which Vista Bank operates, these claims are not supported by any verifiable evidence or data. As such, these allegations are considered to be wholly unsubstantiated and, therefore, non-substantive. Accordingly, the sole claim being considered by the Board concerns the allegation that Vista Bank discriminates in the placement of branches in Lubbock and other areas in which the bank operates branches.

tional community services and financial support would be provided by Vista Bank to charities and organizations that benefit underserved communities in the Dallas AA. Although the proposed branch would not be located in a majority-minority census tract, Vista Bank asserts that the products and services offered by the branch would be competitively priced and designed to meet the convenience and needs of the public, including customers located in majority-minority and LMI communities within the Dallas AA (such as providing free accounts that can be opened and accessed online without going to the branch). Vista Bank further represents that the proposed branch would offer lending products to individuals of different income levels, regardless of location, including but not limited to automobile loans, secured and unsecured personal loans, residential mortgage loans, and SBA loans.

Record of Performance under the CRA

In evaluating the CRA performance of the involved institution, the Board generally considers the institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal supervisor, which in this case is the Federal Reserve Bank of Dallas ("Reserve Bank").¹⁶ In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁷ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test") and a community development test ("Community Development Test") to evaluate the performance of an intermediate small bank, such as Vista Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"),¹⁸ automated loan reports, and other reports generated by the institution in order to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on the institution's (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank's AAs; (3) record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (6) record of taking action, if warranted, in response to written complaints about the institution's performance in helping to meet credit needs in the bank's AAs.¹⁹ The Community Development Test evaluates the number and amounts of the institution's community development loans and qualified investments; the extent to which the institution provides

¹⁶ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

¹⁷ 12 U.S.C. § 2906.

¹⁸ 12 U.S.C. § 2801 *et seq.*

¹⁹ See 12 CFR 228.26(b).

community development services; and the institution's responsiveness through such activities to community development lending, investment, and service needs.²⁰

CRA Performance of Vista Bank

Vista Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of June 12, 2017 ("Vista Bank Evaluation").²¹ The bank received "Satisfactory" ratings for both the Lending Test and the Community Development Test.²²

Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and the credit needs of the bank's AAs. Examiners found that a majority of Vista Bank's home mortgage and small business loans were originated in the bank's AAs. Examiners noted that Vista Bank's distribution of loans based on income and revenue levels of borrowers reflected a reasonable penetration among individuals of different income levels and businesses of different sizes. In addition, examiners found that the bank's geographic distribution of loans reflected reasonable dispersion throughout the bank's AAs. Examiners concluded that the bank did a reasonable job of meeting the small business needs of its AAs.

Examiners found that Vista Bank's performance under the Community Development Test demonstrated adequate responsiveness to the community development needs of the bank's AAs, considering the bank's capacity, loan demand, and available lending opportunities in those areas. Examiners determined that the bank had applied its community development resources strategically to meet the substance of community needs, through qualified community development investments, loans, and services targeted to LMI individuals, as well as revitalization and stabilization efforts. Examiners noted that the bank transitioned to an intermediate small bank on January 1, 2017, and, prior to that date, the bank was not required to participate in community development activities.

Vista Bank's Efforts since the Vista Bank Evaluation

Vista Bank represents that, since the Vista Bank Evaluation, it has continued to help meet the credit needs of its AAs by expanding its capabilities to accept online deposit account applications on the bank's website, so that customers throughout the bank's AAs do not have to visit a physical location to open checking, savings, and time deposit accounts. Vista Bank represents that it has made community development loans that promote and support economic development and revitalization, as well as loans to organizations providing community services to LMI individuals and families. The bank asserts that it maintains investments in three small business investment companies and that the bank directed these companies to use the bank's investment to support businesses in the bank's AAs. Vista Bank also asserts that it has invested in school, city, and county bonds that benefit low and moderate income areas in the bank's communities in Texas. Additionally, Vista Bank maintains that its team members have volunteered to provide free tax prepara-

²⁰ See 12 CFR 228.26(c).

²¹ The Vista Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures, consisting of the Lending and Community Development tests described above. Examiners reviewed HMDA data reported by the bank from January 1, 2012, through December 31, 2016, and a sample of small business loans originated by the bank between July 1, 2016, through December 31, 2016. Examiners also reviewed community development loans, investments, and services from October 9, 2012, through June 12, 2017. However, the rating was based on community development activities by the bank since it transitioned to an intermediate small bank effective January 1, 2017.

²² The Vista Bank Evaluation included a full-scope review of the bank's two AAs: the Lubbock, Texas AA, which consists of Lubbock and Crosby counties, part of the Lubbock Metropolitan Statistical Area; and the Hale County, Texas AA, which consists of Hale County, a non-metropolitan area.

tion services to LMI individuals and that the bank has provided other contributions to benefit the community, such as a financial education program for youths in Lubbock, and has sponsored cultural and educational initiatives for LMI families in Dallas.

Additional Supervisory Considerations

In addition to the Vista Bank Evaluation, the Board has considered the results of a 2019 examination of Vista Bank's compliance with the requirements of the Fair Housing Act, which included a review of the bank's fair lending risk management program. A redlining review included an evaluation of the bank's fair lending risk management processes with respect to the bank's monitoring, branching, marketing, and outreach activities. The Board also has considered Vista Bank's supervisory record with the Texas Department of Banking.

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. Vista Bank asserts that the proposed branch would provide economic benefits and offer a broad range of financial services and products in the Dallas market and enable the bank to reach more consumers and businesses, including those located in majority-minority or LMI areas. Vista Bank represents that members of the public would benefit from the volunteer services and community support that would be provided by the branch through Vista Outreach, the Bank's community outreach program, to ensure adequate coverage of CRA-service-related activities in the Dallas market area.

Conclusion on Convenience and Needs Considerations

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.²³ The Board's approval is specifically conditioned on compliance by Vista Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with this proposal. For purposes of this action, the conditions and commit-

²³ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the application was published in the relevant newspaper of general circulation on May 24, 2019. The comment period ended on June 20, 2019. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why 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.

ments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch 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 September 10, 2019.

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

Ann E. Misback
Secretary of the Board