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Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

BNC Bancorp
High Point, North Carolina

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2016–12 (October 14, 2016)

BNC Bancorp ("BNC"), High Point, North Carolina, a bank holding company, has requested the Board's approval under section 3 of the Bank Holding Company Act of 1956, as amended ("BHC Act"),[1] to merge with High Point Bank Corporation ("HPBC"), and thereby indirectly acquire High Point Bank and Trust Company ("High Point Bank"), both of High Point, North Carolina. Following the proposed acquisition, High Point Bank would be merged into BNC's sole subsidiary state-chartered bank, Bank of North Carolina ("BNC Bank"), Thomasville, North Carolina.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 44610 (July 8, 2016)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BNC, with consolidated assets of approximately $6.5 billion, is the 176th largest insured depository organization in the United States,[4] controlling approximately $5.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] BNC controls BNC Bank, which operates in North Carolina, South Carolina, and Virginia. BNC Bank is the 10th largest insured depository institution in North Carolina, controlling approximately $3.0 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

HPBC, with consolidated assets of approximately $779.6 million, is the 951st largest insured depository organization in the United States, controlling approximately $634.0 million in consolidated deposits, which represent less than 1 percent of nationwide

1 12 U.S.C. § 1842.

2 The merger of High Point Bank into BNC Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. §1828(c). The FDIC approved the bank merger on September 30, 2016.

3 12 CFR 262.3(b).

4 National asset data, market share, and ranking data are as June 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted.

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

deposits. HPBC controls High Point Bank, which operates only in North Carolina. High Point Bank is the 29th largest insured depository institution in North Carolina, controlling deposits of approximately $646.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, BNC would become the 167th largest depository organization in the United States, with consolidated assets of approximately $7.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. BNC would control consolidated deposits of approximately $6.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In North Carolina, BNC Bank would become the 7th largest depository institution, controlling deposits of approximately $3.6 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[6] The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

BNC and HPBC have subsidiary depository institutions that compete directly in the Greensboro-High Point, North Carolina banking market ("Greensboro market") and the Winston-Salem, North Carolina banking market ("Winston-Salem market").[8] The Board has considered the competitive effects of the proposal in each of the relevant markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that would be controlled by BNC;[9] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[10] and other characteristics of the markets.

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6 12 U.S.C. § 1842(c)(1).

7 12 U.S.C. § 1842(c)(1)(B).

8 The Greensboro market is defined as Davidson, Guilford, Randolph, and Rockingham Counties, all of North Carolina. The Winston-Salem market is defined as Davie, Forsyth, Stokes, and Yadkin Counties, all of North Carolina.

9 Local deposit and market share data are as of June 30, 2015, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

10 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 Greensboro and Winston-Salem markets. On consummation of the proposal, the Greensboro market would remain moderately concentrated, as measured by the HHI. The HHI in this market would increase 101 points, from 1050 to 1151, and numerous competitors would remain in the market.[11] On consummation of the proposal, the Winston-Salem market would remain highly concentrated, as measured by the HHI; however, market concentration would increase by less than one point as measured by the HHI. Numerous competitors would also remain in the market.[12]

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

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[13] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

[11] BNC operates the 3rd largest depository institution in the Greensboro market, controlling approximately $1.7 billion in deposits, which represent approximately 11.7 percent of market deposits. HPBC operates the 8th largest depository institution in the same market, controlling deposits of approximately $623.4 million, which represent 4.3 percent of market deposits. On consummation of the proposed transaction, BNC would become the 2nd largest depository organization in the market, controlling deposits of approximately $2.3 billion, which would represent approximately 16.0 percent of market deposits. Twenty-one other competitors would remain in the market.

[12] BNC operates the 9th largest depository institution in the Winston-Salem market, controlling approximately $124 million in deposits, which represent approximately 0.4 percent of market deposits. HPBC operates the 15th largest depository institution in the same market, controlling deposits of approximately $22.9 million, which represent 0.07 percent of market deposits. On consummation of the proposed transaction, BNC would remain the 9th largest depository organization in the market, controlling deposits of approximately $146.9 million, which would represent approximately 0.5 percent of market deposits. The HHI for the Winston-Salem market would increase by less than 1 point to 6740 on consummation, and 17 other competitors would remain in the market.

[13] 12 U.S.C. § 1842(c)(2), (5), and (6).

BNC and HPBC are both well capitalized and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.[14] The asset quality, earnings, and liquidity of BNC Bank and High Point Bank are consistent with approval, and BNC appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

The Board also has considered BNC's plans for implementing the proposal. BNC has conducted comprehensive due diligence and is devoting sufficient financial and other resources to address all aspects of the post-acquisition integration process for this proposal. BNC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, BNC's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BNC plans to integrate HPBC's existing management and personnel in a manner that augments BNC's management.[15]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[16] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be

[14] To effect the holding company merger, each share of HPBC common stock would be converted into a right to receive BNC common stock and cash, based on a certain exchange ratio. BNC has the financial resources to fund the transaction.

[15] On consummation of the proposal, one of High Point Bank's directors will be added to the boards of directors of BNC and BNC Bank.

[16] 12 U.S.C. § 1842(c)(2).

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

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

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

Public Comments Regarding the Proposal

In this case, the Board received comments from a commenter who objected to the proposal on the basis of alleged disparities by BNC Bank in the number of conventional home purchase loans made to African Americans and Hispanics, as compared to whites, by BNC Bank in the Charleston-North Charleston-Summerville, South Carolina ("Charleston") Metropolitan Statistical Area ("MSA"), the number of refinance loans made to African Americans, as compared to whites, in the Charleston MSA, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[19] for 2014, and the number of conventional home purchase loans made to African Americans, compared to whites, in the Charleston MSA, as reported under HMDA for 2015. The commenter also objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans made to African Americans and Hispanics, as compared to whites, and the number of refinance loans and home improvement loans made to African Americans, as compared to whites, by High Point Bank in the Greensboro-High Point, North Carolina MSA ("Greensboro MSA"), as reported under HMDA for 2014. In addition, the commenter alleged disparities in the number of home purchase loans made to African Americans, as compared to whites, by High Point Bank in the Winston-Salem, North Carolina MSA ("Winston-Salem MSA"). The commenter also criticized the rate at which BNC Bank denied refinance loan applications from African Americans, as compared to whites, in the Charleston MSA, and the rate at which High Point Bank denied refinance loan

[17] 12 U.S.C. § 2901(b).
[18] 12 U.S.C. § 2903.
[19] 12 U.S.C. § 2801 *et seq.*

applications from African Americans, as compared to whites, in the Greensboro MSA, as reported under HMDA for 2014.

Businesses of the Involved Institutions and Response to the Comments

BNC Bank is a state-chartered commercial bank, headquartered in Thomasville, North Carolina. It offers a full range of banking and financial services, including deposit accounts; commercial, real estate, and consumer loan products; mortgage brokerage services; and a full line of commercial and consumer insurance and investment products and services. The bank's main loan focus is small and medium-sized businesses.

High Point Bank is a state-chartered commercial bank that offers a broad range of consumer and commercial banking products and services through its branch network in North Carolina and its wholly-owned subsidiaries. The products and services that it offers include checking, savings, money market, and certificate of deposit accounts; and mortgages, consumer installment, and loan products. In addition, High Point Bank offers the following services through its wholly-owned subsidiaries: home, health, life, automotive, and other insurance products; trust and estate planning; investment management; and retirement services.

BNC asserted that BNC Bank's lending record to minorities in the Charleston MSA, as reflected in 2014 HMDA data, was attributable to the bank's recent entry into the MSA in mid-2012. BNC represented that although the bank did not receive many mortgage applications in the Charleston MSA, the bank's approval rates for minorities were very favorable. BNC also asserted that BNC Bank has increased its lending to African Americans and Hispanics since its entry into the Charleston MSA, as reflected in the bank's HMDA lending data reported in 2014, as compared to its 2013 HMDA lending data. Also, BNC asserted that the Charleston MSA is a very competitive market, and the bank is making progress in expanding its Charleston branch network. BNC expects that the larger branch network will allow BNC Bank to better serve the community.

BNC maintained that High Point Bank approved all home purchase applications received from African Americans in the Greensboro and Winston-Salem MSAs. BNC attributes the low approval rate by High Point Bank for home refinance loans to African Americans to the low volume of applications received from African Americans by High Point Bank. BNC asserted that High Point Bank's low mortgage application volume was attributable to the highly competitive banking markets, the bank's limited number of locations, the bank's small overall staffing levels, and the bank's recent entry and lack of name recognition in the Greensboro and Winston-Salem MSAs.

BNC pointed to the "Satisfactory" CRA performance ratings of BNC Bank and High Point Bank as an indication that these banks are meeting the credit needs of their communities. BNC further asserted that BNC Bank is committed to ensuring that the credit needs of its communities are being met and is developing initiatives and programs focused on lending, investment, and service activities in its communities, with emphasis on developing programs for LMI individuals.

Records of Performance Under the CRA

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

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

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper income individuals;[22] (4) the institution's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when 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.[23] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

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

[21] 12 U.S.C. § 2906.

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

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

CRA Performance of BNC Bank

BNC Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("BNC Bank Evaluation"), as of April 28, 2014.[24] BNC Bank received a "High Satisfactory" rating for both the Lending Test and the Service Test, and a "Low Satisfactory" rating for the Investment Test.[25] The Board has consulted with the FDIC regarding the BNC Bank Evaluation.

Examiners found that the bank's overall lending activity reflected good responsiveness to the assessment areas' credit needs. Examiners noted that the bank originated a significant majority of home mortgage loans and small business loans within its combined assessment areas, and the geographic distribution of loans reflected good penetration throughout the assessment areas. Examiners also noted that the bank originated a relatively high level of community development loans in its assessment areas and made good use of flexible lending practices in order to serve the assessment areas' credit needs. BNC Bank is qualified as a U.S. Small Business Administration ("SBA") lender, and examiners highlighted that the bank was one of the most active SBA lenders in North Carolina over the evaluation period and that it ranked among the top ten of all lenders, with the banks ranked ahead of BNC Bank having larger asset sizes and national or regional presences. The bank also offered flexible mortgage loan products through the Federal Housing Administration, the SBA, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the North Carolina Housing Finance Agency.

Examiners found that BNC Bank had an adequate level of qualified community development investments and grants and that it exhibited adequate responsiveness to the credit needs of the assessment areas. Examiners noted that the bank's level of qualified equity investments and charitable donations had significantly improved from the last examination. Examiners highlighted that nearly all of the bank's qualified CRA grants and donations were made directly to community development- related organizations located within the bank's assessment areas. The remainder of the bank's CRA grants and donations were made to qualified individuals and community development-related organizations in the broader regional area that included the bank's assessment areas. Examiners noted that the grants and donations provided much needed financial assistance to organizations with the primary purpose of economic development, community revitalization, affordable housing, financial education, scholarships for LMI students, and basic human services to LMI individuals.

Examiners noted that the bank's overall "High Satisfactory" rating under the Service Test was based primarily on the community development services, but examiners also consid-

[24] The BNC Bank Evaluation was conducted using the CRA Large Bank Examination Procedures and covered the time period from June 27, 2011, to April 28, 2014. For the Lending Test, the evaluation included a review of loans reportable under HMDA and CRA data collection requirements for 2012 and 2013, focusing on home purchase and home refinance loans only. For the Investment and Service Tests, the evaluation also covered the period from June 27, 2011, to April 28, 2014. The Investment Test also included investments prior to June 27, 2011, that were still outstanding as of April 28, 2014.

[25] During the BNC Bank Evaluation, examiners reviewed eight assessment areas of the bank in North Carolina and four assessment areas of the bank in South Carolina. Examiners placed greater weight on the bank's performance in North Carolina in assigning the overall CRA rating, because 35 of the bank's 45 branches were located in North Carolina, and over 86 percent of the bank's lending occurred within the state. Three of the bank's eight assessment areas in North Carolina received full-scope reviews. Examiners assigned the most weight to the Charlotte-Gastonia-Rock Hill MSA assessment area in North Carolina and to the Myrtle Beach-North Myrtle Beach-Conway MSA assessment area in South Carolina, based on the significant volume of lending, deposits, and number of branches in those areas, to arrive at the individual state ratings. Examiners also considered the timing of BNC Bank's entry into the Charleston MSA in June 2012, the Burlington, NC MSA in 2013, and the Durham-Chapel Hill, NC MSA in September 2012, along with other extenuating factors in performing limited-scope reviews of these assessment areas.

ered the bank's retail account services. Examiners highlighted that BNC Bank's management, directorate, and other personnel provided a relatively high level of community development services in the bank's assessment areas. Examiners also noted that the bank offered a full array of financial services throughout its assessment areas to ensure that the needs of the communities were met through several delivery methods and that the bank's delivery systems were reasonably accessible to essentially all portions of the institution's assessment areas. In addition, examiners noted that the quantity, quality, and accessibility of service-delivery systems to all segments of its assessment areas supported a "High Satisfactory" rating.

Examiners noted that the bank's "Low Satisfactory" rating under the Investment Test was based primarily on the dollar amount of the bank's qualified investments. Examiners also noted that the bank rarely used innovative and/or complex investments to support community development initiatives. However, examiners found that the bank had an adequate level of qualified community development investments and grants, and the bank exhibited adequate responsiveness to credit and community economic development needs through its investments and contributions.

BNC Bank's efforts since the BNC Bank Evaluation

BNC asserts that, since the BNC Bank Evaluation, BNC Bank has initiated a number of efforts to enhance its support of all of the communities in which the bank operates. For example, BNC represents that BNC Bank has created two new products that should allow the bank to better serve the needs of the unbanked and underbanked in the communities served by the bank. The first new product is a deposit account titled "BNC Beginnings," which is targeted to individuals working to establish or reestablish a banking relationship with the institution. BNC believes that this product will be particularly beneficial or attractive to younger individuals as well as the unbanked or underbanked populations in the communities that the bank serves. The second new product is an affordable mortgage product that is designed for potential homeowners with income of 80 percent or less of the area's median income. BNC Bank asserts that the features and benefits of this product are very attractive to the market and the bank has received tremendous interest across its footprint.

BNC represents that BNC Bank is developing initiatives to expand outreach and increase lending activities, focusing on LMI individuals within its communities. BNC further represents that the bank has formed a Fair Banking Team, responsible for compliance with fair lending, CRA, HMDA, and Unfair, Deceptive, Abusive Acts and Practices laws. Additionally, the bank has formed a CRA committee, which consists of a number of senior officers of the bank, including the director of mortgage banking, chief credit officer, and the bank's CRA officer. BNC also represents that the bank has hired a director of community relations who is directly responsible for helping to increase interaction with the communities the bank serves.

CRA Performance of High Point Bank

High Point Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("High Point Bank Evaluation"), as of September 8, 2014.[26] High Point Bank received a "Satisfactory" rating for both the Lending Test [27] and the Community Development Test.

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[26] The High Point Bank Evaluation was conducted by the FDIC using the Intermediate Small Bank CRA Examination Procedures, which include the Lending and Community Development Tests. Under the Lending Test, examiners evaluated the bank's home mortgage loans and small business loans from 2012 and 2013. As part of

Examiners found that High Point Bank's loan-to-deposit ratio was reasonable, given the institution's size and financial condition and the credit needs of its assessment areas. Examiners noted that a majority of the bank's loans were originated within its assessment areas. Examiners also found that the bank had an excellent distribution of loans among geographies of different income levels within its assessment areas. Examiners noted that the bank had a reasonable borrower distribution among businesses of different sizes and individuals of different income levels.

Examiners found that the bank's community development performance demonstrated an adequate responsiveness to the community development needs of the bank's assessment areas through community development loans, qualified investments, and community development services considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment areas.

Views of Other Regulator, and FDIC Approval of Bank Merger

The Board has consulted with the FDIC, the primary federal supervisor of both BNC Bank and High Point Bank, regarding the FDIC's review of the proposed merger of these two institutions. After a full review of the proposal, including review of the HMDA data cited by the commenter in the public comments opposing the application before the Board, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal without conditions. In addition, the FDIC has indicated its non-objection to approval of this application.

The commenter filed similar CRA and fair lending comments with respect to BNC Bank's lending in the Charleston MSA as had been previously filed in connection with BNC's acquisition of Southcoast Financial Corporation, Mount Pleasant, South Carolina, which was approved in June 2016.[28] In that case, the Board noted that BNC Bank was previously required by the FDIC to develop and submit a supplement to its existing compliance plan to strengthen the bank's fair lending compliance program. The FDIC has indicated that BNC Bank has developed an acceptable supplemental plan and continues to operate in accordance with its compliance plan and the supplement to that plan.

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. BNC represents that, upon consummation of the proposal, customers will find enhanced convenience with a larger, more robust branch network within the Greensboro and Winston-Salem MSAs. BNC also asserts that the convenience and needs of the communities in which High Point Bank currently operates will be better served by increased access to capital and the economies of scale High Point Bank will have as a result of being a part of the resulting institution. Moreover, BNC maintains that its two new product offerings, the "New Beginnings" deposit account and

the Community Development Test, qualified community development loans, investments, and services from October 3, 2011, to September 8, 2014, were reviewed. The High Point Bank Evaluation included full-scope evaluations of Guilford and Randolph Counties in the Greensboro MSA and Forsythe County in the Winston-Salem MSA.

27 The Lending Test applicable to intermediate small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; the percentage of loans and other lending-related activities located in the bank's assessment areas; the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. *See*, *e.g.*, 12 CFR 228.26(b).

28 *See BNC Bancorp*, FRB Order 2016-06 (June 2, 2016).

the affordable mortgage product, should allow BNC Bank to better serve the needs of the unbanked and underbanked in the communities served by the combined bank. Finally, BNC Bank notes that the bank's staff is currently working with the City of High Point to build, remodel, and resell homes in certain struggling neighborhoods currently served by High Point Bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the CRA records of the relevant depository institutions involved; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the FDIC, including regarding BNC Bank's progress in implementing its compliance plan and the supplement to that plan; confidential supervisory information; information provided by BNC; the public comments on the proposal; and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[29]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[30] 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.[31]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, BNC would have approximately $7.3 billion in consolidated assets and, by any of a number of alternative measures of firm size, BNC would not be likely to pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than $2 billion in assets, or that results in a firm with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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[29] Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

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

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

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the proposal should be, and hereby is, approved.[32] 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. Approval of this proposal is specifically conditioned on compliance by BNC with all the conditions set forth in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective October 14, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

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[32] The commenter requested that the Board hold a public hearing or meeting on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's views adequately or why a hearing or meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing or meeting is not required or warranted in this case. Accordingly, the request for a public hearing or meeting on the proposal is denied. The commenter also requested an extension of the comment period. The Board provides a public comment period for an application to provide interested persons the opportunity to submit information and views related to the statutory factors it must consider under the BHC Act. The Board's rules contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. The commenter's request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the comment period.

River Holding Company
Stoddard, Wisconsin

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2016–16 (October 24, 2016)

River Holding Company ("RHC"), Stoddard, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with Sparta Union Bancshares, Inc. ("Sparta"), and thereby acquire its subsidiary bank, Union National Bank & Trust Company ("Union Bank"), both of Sparta, Wisconsin.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 54,085 (2016)).[3] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

RHC, with consolidated assets of approximately $556.1 million, is the 1,281st largest depository organization in the United States, controlling deposits of approximately $469.3 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[4] RHC controls River Bank and Wisconsin River Bank, both of which operate only in Wisconsin. RHC is the 40th largest insured depository organization in Wisconsin, controlling deposits of approximately $460.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[5]

Sparta, with consolidated assets of approximately $119.1 million, is the 4,089th largest depository organization in the United States. Sparta controls Union Bank, a national bank that operates only in Wisconsin. Sparta is the 172nd largest insured depository organization in Wisconsin, controlling approximately $96.9 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Wisconsin.

On consummation of this proposal, RHC would become the 1,078th largest depository organization in the United States, with consolidated assets of approximately $675.2 million, which represent less than 1 percent of the total assets of insured depository institutions in the United States. RHC would control deposits of approximately $568.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in the United States. In Wisconsin, RHC would become the 34th largest depository institution, controlling deposits of approximately $557.4 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 CFR 262.3(b).

4 Nationwide deposit, asset, and ranking data are as of June 30, 2016. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and nondeposit trust companies.

5 State deposit, market share, and ranking data are as of June 30, 2015.

banking in any relevant market.[6] The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[7]

RHC and Sparta have subsidiary depository institutions that compete directly in the Black River Falls, Wisconsin, banking market (the "Black River Falls market").[8] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market; the relative share of the total deposits in insured depository institutions in the market ("market deposits") that RHC would control;[9] the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[10] and other characteristics of the market.

Using the initial competitive screening data, in the Black River Falls market, RHC is the fourth largest depository organization, controlling deposits of approximately $54.3 million, which represent approximately 10.5 percent of market deposits. Sparta is the second largest depository organization in the market, controlling deposits of approximately $96.9 million, which represent approximately 18.7 percent of market deposits. On consummation of the proposal, the combined entity would be the second largest depository organization in the Black River Falls market, controlling deposits of approximately $151.2 million, which would represent approximately 29.1 percent of market deposits. The HHI in the market would increase by 390 points, from 1801 to 2191.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Black River Falls market.[11] Factors indicate that the increase in concentration in the Black River Falls market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, two community credit unions exert a competitive influence in the Black River Falls market. The institutions offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the

6 12 U.S.C. § 1842(c)(1)(A).

7 12 U.S.C. §§ 1842(c)(1)(B).

8 The Black River Falls market is defined as Western Monroe County, Wisconsin, and City Point, Bear Bluff, Knapp, Komensky, Millston, Brockaway, Manchester, Adams, Hixton, Albion, and Irving townships in Jackson County, Wisconsin.

9 Deposit and market share data are as of June 30, 2015, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's Summary of Deposits data.

10 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 the DOJ Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010) www.justice.gov/opa/pr/2010/August/10-at-938.html.

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

relevant banking market.[12] The Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating market influence. This weighting takes into account the limited lending done by these credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Black River Falls market is less significant than would appear from the initial competitive screening data, which focused on commercial bank competitors. After consummation, adjusting to reflect competition by the credit unions, the market concentration level in the Black River Falls market as measured by the HHI would increase by 309, from a level of 1492 to 1801, and the market share of RHC resulting from the transaction would be 25.9 percent. After consummation of the proposal, eleven depository institutions would remain in the Black River Falls market, including one depository institution with a higher market share than RHC's market share. This depository institution would control 28.1 percent of market deposits. The presence of these viable competitors suggests that RHC would have limited ability to unilaterally offer less attractive terms to consumers and that these competitors are able to exert competitive pressure on RHC in the Black River Falls market.

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[13] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The

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[12] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See*, *e.g.*, *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[13] 12 U.S.C. §§ 1842(c)(2), (5), and (6).

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.

River Bank, Wisconsin River Bank, and Union Bank are all well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as an exchange of cash for shares.[14] The asset quality, earnings, and liquidity of RHC and Sparta are consistent with approval, and RHC appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

The Board also has considered RHC's plans for implementing the proposal. RHC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. RHC would operate Union Bank as a standalone depository institution following consummation of the proposal. RHC has represented that Union Bank has adequate risk- management systems that will remain in place following consummation of the proposal, pending ongoing review and analysis of where improvements and efficiencies can be gained. These risk-management systems are considered to be acceptable from a supervisory perspective. In addition, RHC's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and RHC plans to integrate Union Bank's existing management and personnel in a manner that augments RHC's management.[15]

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

[14] To effect the holding company merger, all outstanding shares of Sparta will be converted into the right to receive cash from RHC. RHC expects to fund the exchange by a dividend from River Bank to RHC and through financing from RHC's president and chairman and from a third-party lender. RHC has the financial resources to support this obligation.

[15] On consummation, the existing senior management of Union Bank is expected to remain unchanged. In addition, three existing members of Union Bank's board of directors will continue to serve on the board of Union Bank following the transaction. The president and chairman of RHC and the vice president of RHC will also serve on the board of Union Bank.

Convenience and Needs Considerations

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

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of River Bank, Wisconsin River Bank, and Union Bank; the fair lending and compliance records of each of the involved banks; the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC"); confidential supervisory information; and information provided by RHC.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance in light of examinations and other supervisory information, as well as information and views provided by the appropriate federal supervisors.[19]

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.[20] 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.

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16 12 U.S.C. § 1842(c)(2).

17 12 U.S.C. § 2901(b).

18 12 U.S.C. § 2903.

19 *See* Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48,506, 48,548 (July 25, 2016).

20 12 U.S.C. § 2906.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available Home Mortgage Disclosure Act ("HMDA") data, 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 based on its (1) loan-to-deposit ratio, (2) loan originations for sale to the secondary market, (3) lending-related activities in its assessment areas, (4) record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, (5) geographic distribution of loans, and (6) record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions such as River Bank are subject to a community development test that evaluates the number and amount of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.[21]

CRA Performance of River Bank and Wisconsin River Bank

River Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of June 8, 2015 ("River Bank Evaluation").[22] River Bank received "Satisfactory" ratings for both the lending test and the community development test.[23]

Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners also noted that a majority of River Bank's loans and other lending-related activities were in its assessment areas. Although examiners found that the geographic distribution of River Bank's residential real estate loans reflected excellent dispersion throughout La Crosse County, the bank's geographic distribution of loans was otherwise found to be poor. Examiners noted that River Bank's distribution of borrowers reflected reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different sizes.

Examiners found that River Bank's community development performance demonstrated an adequate level of responsiveness to the community development needs of its assessment areas through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the availability of opportunities for community development within the bank's assessment area.

[21] *See* 12 CFR 228.26.

[22] The River Bank Evaluation was conducted using Intermediate Small-Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The River Bank Evaluation reviewed a sample of small business loans originated during the period from July 1, 2014 through December 31, 2014, and all home mortgage loans reported on the bank's 2013 and 2014 HMDA Loan Application Registers. Examiners reviewed community development loans, qualified investments, and community development services since February 25, 2013.

[23] The River Bank Evaluation reviewed the bank's activities in La Crosse County, Wisconsin and portions of Crawford, Monroe, Trempealeau, and Vernon Counties, Wisconsin.

River Bank's Efforts Since the River Bank Evaluation

RHC represents that, since the River Bank Evaluation, River Bank has made a number of community development loans to support its assessment areas. RHC represents that these have included loans to local small businesses and to organizations devoted to assisting low-income families. RHC also represents that River Bank's employees have continued to engage in community development services to support the communities in which the bank operates. RHC represents that River Bank has maintained its existing community development investments since the River Bank Evaluation and continues to seek additional community development investment opportunities.

CRA Performance of Wisconsin River Bank

Wisconsin River Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of September 3, 2013 ("Wisconsin River Bank Evaluation").[24] Examiners found that the bank's average loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners noted that a majority of the bank's residential, small business, and small farm loans were in its assessment areas, both by number and dollar volume. Examiners also noted that the bank's distribution of borrowers reflected reasonable penetration among businesses and farms of different sizes and among individuals of different income levels (including LMI individuals). Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its assessment areas.

Wisconsin River Bank's Efforts Since the Wisconsin River Bank Evaluation

RHC represents that Wisconsin River Bank continues to help meet the credit needs of its local communities by offering loan products from the Wisconsin Housing and Economic Development Authority and the United Stated Department of Agriculture's Rural Development Program to borrowers who may not qualify for traditional bank financing. RHC also represents that Wisconsin River Bank has engaged in lending to support local business projects.

CRA Performance of Union Bank

Union Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the OCC, as of May 19, 2014 ("Union Bank Evaluation").[25] Examiners found that the bank's loan-to-deposit ratio was reasonable and comparable to similarly situated banks. Examiners noted that a substantial majority of the bank's loans were originated in its assessment area and that its distribution of borrowers reflected reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different sizes.

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[24] The Wisconsin River Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Wisconsin River Bank Evaluation reviewed (1) a sample of small business and small farm lending during 2012 and 2013 and (2) the bank's HMDA-reportable residential mortgage loans from January 1, 2011, though June 30, 2013. The Wisconsin River Bank Evaluation included reviews of the bank's activities in nine census tracts in Dane and Columbia Counties, Wisconsin, and eight non-Metropolitan Statistical Area census tracts in Sauk County, Wisconsin.

[25] The Union Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Union Bank Evaluation reviewed the bank's commercial and residential real estate loans from January 20, 2009, through May 19, 2014. The Union Bank Evaluation included reviews of the bank's activities in five contiguous census tracts in Monroe County, Wisconsin.

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. RHC represents that it would improve Union Bank customers' access to loans in excess of the bank's legal lending limit by providing existing and future customers of Union Bank with the additional lending resources of River Bank and Wisconsin River Bank. RHC also represents that customers of Union Bank may gain access to nondeposit investment products through RHC and its affiliates. RHC represents that it does not plan to reduce or eliminate any services currently offered by Union Bank.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

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

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[27] These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[28]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, RHC would have approximately $675.2 million in consolidated assets and, by any of a number of alternative measures of firm size, would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or results in a firm

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

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

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

with less than $25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. 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 RHC with all the conditions set forth in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 by the Federal Reserve Bank of Chicago acting pursuant to delegated authority.

By order of the Board of Governors, effective October 24, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Wintrust Financial Corporation
Rosemont, Illinois

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2016–17 (October 28, 2016)

Wintrust Financial Corporation ("Wintrust"), Rosemont, Illinois, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with First Community Financial Corporation ("First Community"), and thereby indirectly acquire First Community Bank ("First Community Bank"), both of Elgin, Illinois.

In addition, Wintrust's subsidiary state member bank, St. Charles Bank & Trust Company ("St. Charles Bank"), St. Charles, Illinois, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with First Community Bank, with St. Charles Bank as the surviving entity.[3] St. Charles Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate a branch at the main office and at a branch of First Community Bank.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 473940-47395 (July 21, 2016)).[5] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation ("FDIC").

Wintrust, with consolidated assets of approximately $24.4 billion, is the 68th largest insured depository organization in the United States.[6] Wintrust controls approximately $20.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Wintrust controls 15 insured depository institutions, which operate in Illinois, Indiana, and Wisconsin. Wintrust is the 5th largest insured depository organization in Illinois, controlling deposits of $16.0 billion, which represent 3.46 percent of the total deposits of insured depository institutions in that state.[7]

First Community, with consolidated assets of approximately $179.8 million, is the 3,246th largest insured depository organization in the United States, controlling approximately $153.7 million in consolidated deposits, which represent less than 1 percent of nationwide deposits. First Community controls First Community Bank, which operates only in Illinois. First Community is the 246th largest insured depository organization in Illinois, control-

1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in the appendix.
5 12 CFR 262.3(b).
6 National asset data, market share, and ranking data are as June 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted. State asset, market share, and ranking data does not include acquisitions made by Wintrust since June 30, 2016.
7 In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

ling deposits of approximately $141.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Wintrust would remain the 68th largest depository organization in the United States, with consolidated assets of approximately $24.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Wintrust would control consolidated deposits of approximately $20.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Illinois, Wintrust would remain the 5th largest depository organization, controlling deposits of approximately $16.2 billion, which represent approximately 3.49 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

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

Wintrust and First Community have subsidiary depository institutions that compete directly in the Chicago, Illinois banking market ("Chicago market").[10] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") that would be controlled by Wintrust;[11] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[12] and other characteristics of the market.

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8 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

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

10 The Chicago market consists of Cook County, DuPage County, Lake County, Will County, Kane County, McHenry County, Kendall County, DeKalb County, Grundy County, Kankakee County, plus Milks Grove, Chebanse, Papineau, Beaverville, Ashkum, Martinton, and Beaver townships of Iroquois County; plus Roger, Mona, Pella, and Brenton townships in Ford County, all in Illinois; and Pleasant Prairie, Bristol, Salem, and Randall townships in Kenosha County, Wisconsin.

11 Local deposit and market share data are as of June 30, 2015, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

12 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (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 Chicago market. On consummation of the proposal, the Chicago market would remain unconcentrated, as measured by the HHI. The HHI in this market would increase by less than 1 point to remain at 985, and numerous competitors would remain in the market.[13]

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[14] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Wintrust and First Community are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a cash purchase, with a subsequent merger of St. Charles Bank and First Community Bank.[15] The asset quality, earnings, and liquidity of St. Charles Bank and First Community Bank are consistent with approval, and Wintrust appears to have adequate resources to absorb the costs of the proposal and to

[13] Wintrust operates the 5th largest depository institution in the Chicago banking market, controlling approximately $16.9 billion in deposits, which represent approximately 4.55 percent of market deposits. First Community operates the 104th largest depository institution in the same market, controlling deposits of approximately $141.0 million, which represent 0.04 percent of market deposits. On consummation of the proposed transaction, Wintrust would remain the 5th largest depository organization in the market, controlling deposits of approximately $17.1 billion, which represent approximately 4.59 percent of market deposits. The HHI for the Chicago market would remain 985, and 186 other competitors would remain in the market.

[14] 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11). 5

[15] To effect the holding company merger, each share of First Community common stock would be converted into a right to receive cash, based on a certain exchange ratio. Wintrust has the financial resources to fund the transaction.

complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

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

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

Convenience and Needs Considerations

In acting on a proposal under the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[16] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA"). 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,[17] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire

[16] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).
[17] 12 U.S.C. § 2901(b).

community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[18]

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of First Community Bank and St. Charles Bank; the fair lending compliance records of both banks; the supervisory views of examiners; confidential supervisory information; information provided by Wintrust; and the public comment received on the proposal.[19] The Board also considered the reports of examination of the CRA performance and fair lending compliance records of Wintrust's 14 other insured depository institutions.

Businesses of Involved Institutions

St. Charles Bank is a state-chartered, commercial bank, headquartered in St. Charles, Illinois. It offers a broad range of banking and financial services, including deposit accounts; checking accounts; certificates of deposits; and commercial, real estate, and consumer loan products. The bank's main loan focus is small and medium-sized businesses and loans secured by commercial real estate.

First Community Bank is a state-chartered, commercial bank that offers a broad range of consumer and commercial banking products and services, including checking, savings, money market, and certificate of deposit accounts; mortgages, consumer installment loans, and loan products; and retirement services. The bank's primary loan focus is commercial and commercial real estate lending.

Records of Performance under the CRA

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

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[18] 12 U.S.C. § 2903.

[19] One community organization asserted that the proposal should not be approved unless Wintrust develops and agrees to a Community Reinvestment Act Plan ("Plan") and such Plan is included as a condition of the Board's approval. In response to the comment, Wintrust asserts that it is in agreement with the principles raised by the commenter, such as the value of community engagement, the importance of the CRA, and the importance of meeting community needs. Wintrust asserts that St. Charles Bank has a strong record of meeting the credit and other banking needs of LMI individuals and routinely evaluates the credit and deposit needs of unbanked and underbanked individuals. Wintrust further represents that it is strongly committed to compliance with the CRA and that it has a history of strong CRA performance throughout the organization.

The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See*, *e.g.*, *Huntington Bancshares Incorporated*, 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.

CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[20] In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Chicago ("Reserve Bank").

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

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"), in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[22] (4) the institution's community development lending, including the number and amounts of community development loans, and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of St. Charles Bank

St. Charles Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of April 22, 2013 ("St. Charles Bank Evaluation").[23] St. Charles Bank received a "Low Satisfactory" rating for the Lending Test and a "High Satisfactory" rating for both the Service Test and the Investment Test.[24]

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

21 12 U.S.C. § 2906.

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

23 The St. Charles Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed HMDA-reportable loans and small business lending from January 1, 2009, to December 31, 2012. The evaluation period for all qualified community development activities, including community development loans, investments and donations, and services was April 20, 2009, through April 22, 2013.

24 The St. Charles Bank Evaluation included a full-scope evaluation of Kane County, the bank's only assessment area. In September 2011, the bank's assessment area was expanded to include all of Kane County, Illinois, to reflect the acquisition of Elgin State Bank. The assessment area is located entirely within the Chicago-Joliet-Naperville, Illinois-Indiana-Wisconsin Metropolitan Statistical Area ("Chicago MSA").

Examiners found that St. Charles Bank's overall lending levels reflected adequate responsiveness to credit needs in the assessment area. Examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment area[25] and that the geographic distribution of loans reflected adequate penetration throughout the assessment area. In particular, examiners found that St. Charles Bank displayed adequate penetration among customers of different income levels and good penetration among businesses of different sizes. Examiners also noted that, overall, the bank originated a relatively high level of community development loans in its assessment area and that the bank made use of innovative and flexible lending practices in order to serve the assessment area's credit needs.

Examiners found that St. Charles Bank had a significant level of qualified community development investments and grants and that the bank occasionally acted in a leadership position for such investments made throughout its assessment area. Examiners noted that St. Charles Bank exhibited good responsiveness to the credit needs of the assessment area. Examiners highlighted the bank's participation in an innovative investment that funded the acquisition and rehabilitation of properties in LMI areas and extended mortgages to qualified LMI individuals for the purchase of those properties. Examiners noted that the bank made qualified community development grants and donations to organizations providing home construction and home repairs, transitional and emergency housing, affordable medical care, and youth programs to LMI individuals. Likewise, examiners noted that qualified investments were distributed for affordable housing, community services, and economic development purposes.

Examiners highlighted that St. Charles Bank's officers and staff provided a relatively high level of community development services in the bank's assessment area. Examiners also considered St. Charles Bank's retail services. Examiners noted that St. Charles Bank's delivery systems were accessible to geographies and individuals of different income levels in the assessment area and that the bank offered services through several delivery channels, including automated teller machines, online banking services, branches, and a telebanking service. In addition, examiners noted that St. Charles Bank's customers had access to automated teller machines operated by any of Wintrust's other subsidiary depository institutions without incurring a transaction fee.

St. Charles Bank's Efforts Since the St. Charles Bank Evaluation

Wintrust asserts that, since the St. Charles Bank Evaluation, St. Charles Bank has initiated a number of efforts to enhance its support of all of the communities in which the bank operates. Wintrust also asserts that the bank has continued to provide a variety of financial products and services designed to meet the credit and banking needs of LMI individuals. Additionally, Wintrust represents that the bank opened a branch in a moderate-income community in recognition of the additional need in that community. Wintrust also represents that the bank has served in a leadership role in supporting a number of community development organizations. According to Wintrust, St. Charles Bank has provided more than 3,300 community service hours since the St. Charles Bank Evaluation.

Wintrust further represents that the bank has continued its initiatives and programs focused on lending, investment, and service activities in its communities, with emphasis on small business lending and affordable housing and on offering products and services aimed at meeting the needs of unbanked and underbanked residents. In particular,

[25] St. Charles Bank is treated, for CRA purposes, as originating some of the loans of its affiliate, Wintrust Mortgage Co., Rosemont, Illinois, a subsidiary of Barrington Bank & Trust Company, National Association, Barrington, Illinois, in determining the level of loans originated in its assessment area.

Wintrust states that the bank offers checking and savings account products that do not require minimum balances, as well as a personal loan product that is an affordable, safe, and accessible alternative to a payday loan. Additionally, the bank participates in a number of programs aimed at first-time homebuyers and LMI homebuyers. According to Wintrust, the bank has made a number of community development loans since the St. Charles Bank Evaluation, with a focus on affordable housing. Further, Wintrust represents that St. Charles Bank has established a CRA Committee consisting of St. Charles Bank executives that meets monthly to oversee CRA-related initiatives, products, and services.

CRA Performance of Other Wintrust Subsidiary Banks

In addition to St. Charles Bank, Wintrust is the parent company of 14 other insured depository institutions. Seven of Wintrust's 14 other wholly owned depository institutions received "Outstanding" CRA performance ratings on their most recent CRA examinations, with the other seven institutions receiving "Satisfactory" CRA ratings. Wintrust further represents that five of its subsidiary banks improved their component CRA performance ratings from "Satisfactory" to either "High Satisfactory" or "Outstanding" in their subsequent CRA performance exams. The largest of these depository institutions, Lake Forest Bank & Trust Company, Lake Forest, Illinois, was among the depository institutions that received an "Outstanding" CRA performance rating by the Reserve Bank at its most recent CRA performance evaluation, dated February 29, 2016. This rating included "Outstanding" ratings on each of the Lending, Service, and Investment Tests. Wintrust further represents that it has set a number of CRA goals, including a goal that each subsidiary bank strive to attain an "Outstanding" CRA performance rating and that lending be aligned with meeting or exceeding peer lending percentages.

CRA Performance of First Community Bank

First Community Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("First Community Bank Evaluation"), as of February 11, 2013.[26]

Examiners found that First Community Bank's loan-to-deposit ratio was reasonable, given the institution's size, financial condition, and assessment area's credit needs. Examiners noted that a majority of the bank's loans and other lending-related activities were made within its assessment area. Examiners also found that the geographic distribution of loans reflected reasonable dispersion throughout the assessment area. Examiners noted that the bank's borrower distribution reflected reasonable penetration among business of different sizes and individuals of different income levels.

Examiners also noted that First Community Bank was an active small business lender and that the distribution of the bank's small business loans was reasonable. Further, examiners noted that while these loans would not be considered community development initia-

[26] The First Community Bank Evaluation was conducted by the FDIC using the Interagency Evaluation Procedures for Small Institutions. The examination procedures applicable to small banks specifically evaluate (1) the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) the percentage of loans and other lending-related activities located in the bank's assessment areas; (3) the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; (4) the geographic distribution of the bank's loans; and (5) the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. *See*, *e.g.*, 12 CFR 228.26(b). In the First Community Bank Examination, examiners evaluated the bank's home mortgage loans and small business loans in 2011 and 2012. The First Community Evaluation included a full-scope evaluation of the bank's only assessment area, which is composed of geographies in Kane and Cook Counties in Illinois. The assessment area is located entirely in the Chicago MSA.

tives, they supported credit availability for small businesses in the bank's assessment area. Examiners also noted that bank's distribution of home mortgage loans reflected reasonable penetration among individuals of different income levels.

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. Wintrust represents that on consummation of the proposal, existing customers of First Community Bank will find enhanced convenience through greater access to capital, a wider range of products and services, and a larger network of automated teller machines in the Chicago MSA. Wintrust has also indicated that customers of First Community Bank would have access to products currently offered at St. Charles Bank that serve the needs of the unbanked and underbanked in the communities within the bank's assessment area. Wintrust represents that there will be no substantive change in banking operations and no significant changes in product offerings, interest rates, fees, or pricing as a result of the proposal. Wintrust asserts that St. Charles Bank has set a number of CRA goals, including a goal for community development lending to be 20 percent of tier 1 capital and a goal for small business lending to exceed peer-institution percentages for small business lending in the bank's assessment area.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[27]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[28] 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

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

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

institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.[29]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Wintrust would have approximately $24.6 billion in consolidated assets and, by any of a number of alternative measures of firm size, Wintrust would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets, or that results in a firm with less than $25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

Establishment of Branches

St. Charles Bank has applied under section 9 of the FRA to establish branches at current locations of First Community Bank.[30] The Board has assessed the factors it is required to consider when reviewing an application under that section.[31] Specifically, the Board has considered St. Charles Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investments in bank premises.[32] For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

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

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

[30] 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2) and (c). On consummation, all of St. Charles Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. Ann. 5/1 *et seq*.

[31] 12 U.S.C. § 322; 12 CFR 208.6.

[32] On consummation of the proposed transaction, St. Charles Bank's investments in bank premises would remain within legal requirements under 12 CFR 208.21.

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 October 28, 2016.

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

Robert deV. Frierson
Secretary of the Board

Appendix

Branches to Be Acquired by St. Charles Bank

1. 50 Tyler Creek Plaza, Elgin, Illinois 60123
2. 165 South Randall Road, Elgin, Illinois 60123

First Midwest Bancorp, Inc.
Itasca, Illinois

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2016–18 (November 10, 2016)

First Midwest Bancorp, Inc. ("First Midwest"), Itasca, Illinois, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with Standard Bancshares, Inc. ("Standard"), and thereby indirectly acquire Standard Bank and Trust Company ("SB&T"), both of Hickory Hills, Illinois.

In addition, First Midwest's subsidiary state member bank, First Midwest Bank, Itasca, Illinois, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act") to merge with SB&T, with First Midwest Bank as the surviving entity.[3] First Midwest Bank also has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the main office and branches of SB&T.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 54577 (August 16, 2016)).[5] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation ("FDIC").

First Midwest, with consolidated assets of approximately $11.0 billion, is the 115th largest insured depository organization in the United States.[6] First Midwest controls approximately $9.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. First Midwest controls First Midwest Bank, which operates in Illinois, Indiana, and Iowa. First Midwest is the 13th largest insured depository institution in Illinois, controlling deposits of approximately $7.4 billion, which represent 1.6 percent of the total deposits of insured depository institutions in that state. First Midwest is the 25th largest insured depository institution in Indiana, controlling deposits of approximately $803.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Standard, with consolidated assets of approximately $2.5 billion, is the 350th largest insured depository organization in the United States. Standard controls approximately $2.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Standard controls SB&T, which operates in Illinois and Indiana. Standard is the 26th largest insured depository institution in Illinois, controlling deposits of approximately $1.9 billion, which

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1 12 U.S.C. § 1841 *et seq*.
2 12 U.S.C. § 1842.
3 12 U.S.C. § 1828(c).
4 12 U.S.C. § 321. These locations are listed in the Appendix.
5 12 CFR 262.3(b).
6 National asset data, market share, and ranking data are as of June 30, 2016, unless otherwise noted. State asset data, market share, and ranking data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

represent less than 1 percent of the total deposits of insured depository institutions in that state. Standard is the 62nd largest insured depository institution in Indiana, controlling deposits of approximately $241.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, First Midwest would become the 101st largest insured depository organization in the United States, with consolidated assets of approximately $13.4 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. First Midwest would control consolidated deposits of approximately $11.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. First Midwest would remain the 13th largest insured depository organization in Illinois, controlling deposits of approximately $9.4 billion, which represent 2 percent of the total deposits of insured depository institutions in that state. First Midwest would become the 23rd largest insured depository organization in Indiana, controlling deposits of approximately $1.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

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

For purposes of the BHC Act, the home state of both First Midwest and SB&T is Illinois.[11] SB&T also is located in Indiana. First Midwest is well capitalized and well managed, and First Midwest Bank has an "Outstanding" Community Reinvestment Act of 1977

7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

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

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

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

("CRA")[12] rating. There are no minimum age requirements under the laws of Indiana that would apply to First Midwest's acquisition of Standard, and SB&T has been in existence for more than five years.[13]

On consummation of the proposed transaction, First Midwest would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Illinois imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[14] The combined organization would control approximately 2 percent of the total amount of deposits of insured depository institutions in Illinois, and approximately 1 percent of the total amount of deposits of insured depository institutions in Indiana, the only states in which First Midwest and Standard have overlapping banking operations. The Board has considered all other requirements under section 3(d) of the BHC Act, including First Midwest's record of meeting the credit needs of the communities it serves. In light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.[15]

Competitive Considerations

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

First Midwest and Standard have subsidiary depository institutions that compete directly in the Chicago, Illinois, banking market ("Chicago market") and the Gary-Hammond, Indiana, banking market ("Gary-Hammond market").[18] The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the markets; the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that First Midwest would control;[19] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive

[12] 12 U.S.C. § 2901 *et seq*.

[13] *See* Ind. Code § 28-2-17.

[14] 205 Ill. Comp. Stat. 5/21.3(a). Indiana does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

[15] Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act") permits the Board, in certain circumstances, to approve interstate merger transactions that would otherwise be prohibited under state law. 12 U.S.C. § 1831u(a)(1). For purposes of the Riegle-Neal Act, an "interstate merger transaction" is one in which the insured banks proposing to merge have different home states. *See* 12 U.S.C. § 1831u(g)(4) and (6). The home state of both First Midwest Bank and SB&T is Illinois; therefore, section 102 of the Riegle-Neal Act does not apply to the proposed bank merger. *Id.*

[16] 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

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

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

[19] Local deposit and market share data are as of June 2015, 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 Finan-*

Review guidelines ("DOJ Bank Merger Guidelines");[20] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Chicago and Gary-Hammond markets. On consummation of the proposal, the Chicago and Gary-Hammond markets would remain unconcentrated. The change in the HHI in these markets would be small, and numerous competitors would remain in the markets.[21]

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

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[22] In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The

cial 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).

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

21 First Midwest operates the 12th largest depository institution in the Chicago market, controlling approximately $7.4 billion in deposits, which represent approximately 2 percent of market deposits. Standard operates the 20th largest depository institution in the market, controlling approximately $1.9 billion in deposits, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, First Midwest would remain the 12th largest depository institution in the market, controlling deposits of approximately $9.3 billion, which represent approximately 2.5 percent of market deposits. The HHI for the Chicago market would increase by 2 points to 987, and 186 competitors would remain in the market. First Midwest operates the 6th largest depository institution in the Gary-Hammond market, controlling approximately $803.6 million in deposits, which represent approximately 6 percent of market deposits. Standard operates the 13th largest depository institution in the market, controlling approximately $241.2 million in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, First Midwest would become the 4th largest depository institution in the market, controlling deposits of approximately $1 billion, which represent approximately 7.8 percent of market deposits. The HHI for the Gary-Hammond market would increase by 21 points to 955, and 30 competitors would remain in the market.

22 12 U.S.C. §§ 1842(c)(2), (5), and (6), and 1828(c)(5) and (11).

Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Midwest and First Midwest Bank are both well capitalized, and the combined entity would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[23] The asset quality, earnings, and liquidity of First Midwest Bank and SB&T are consistent with approval, and First Midwest appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

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

[23] To effect the holding company merger, Benjamin Acquisition Corporation, a wholly owned subsidiary of First Midwest recently formed to facilitate the transaction, would merge with Standard, with Standard as the surviving entity ("Acquisition Merger"), and immediately thereafter, Standard would merge with First Midwest, with First Midwest as the surviving entity. Upon consummation of the Acquisition Merger, each share of Standard common stock would be converted into the right to receive First Midwest common stock based on an exchange ratio. Following the holding company mergers, SB&T would merge with and into First Midwest Bank, with First Midwest Bank as the resulting entity.

Midwest plans to integrate Standard's existing management and personnel in a manner that augments First Midwest's management.[24]

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

Convenience and Needs Considerations

In acting on a proposal under the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[25] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA. 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,[26] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[27]

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of First Midwest Bank and SB&T; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by First Midwest; and the comment received on the proposal.[28]

[24] On consummation, three individuals serving as senior management officials at Standard or SB&T will serve as senior management officials at the First Midwest banking organization. These individuals include Standard's chief executive officer, who will serve as First Midwest's market president of the South Metro Chicago region and is expected to be appointed as a member of the board of directors of First Midwest Bank.

[25] 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5).

[26] 12 U.S.C. § 2901(b).

[27] 12 U.S.C. § 2903.

[28] A community organization requested that the Board condition its approval of the proposal upon First Midwest creating a CRA plan with input from the public. First Midwest has responded that it has a history of strong CRA performance that reflects the effectiveness and consistency of its CRA-related activities, strategies, and community outreach. 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 organizations. *See*, *e.g.*, *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*

Businesses of the Involved Institutions

First Midwest Bank offers a broad range of retail and commercial banking products and services to consumers and businesses. Through its network of approximately 110 branches located in Illinois, Indiana, and Iowa, First Midwest Bank offers a variety of banking products, including commercial, residential, agricultural, and consumer loans; personal checking and savings accounts; money market accounts; certificates of deposit; and capital market and treasury management services.

SB&T offers a more limited range of retail and commercial products through 35 branches located in Illinois and Indiana. Its products include personal checking and savings accounts, debit and credit cards, and certificates of deposit, as well as commercial, real estate, and consumer loans. SB&T also offers trust and wealth management services.

Records of Performance under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[29] In this case, the Board considered the supervisory views of its supervisory staff and of examiners from the Federal Reserve Bank of Chicago ("Reserve Bank") and the FDIC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.[30] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

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

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.

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

30 12 U.S.C. § 2906.

and upper-income individuals;[31] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of First Midwest Bank

First Midwest Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the Reserve Bank, as of March 2, 2015 ("First Midwest Bank Evaluation").[32] The bank received "Outstanding" ratings for each of the Lending Test, the Investment Test, and the Service Test.[33]

Examiners concluded that the bank's overall lending levels reflected good responsiveness to credit needs in its assessment areas. Examiners noted that a substantial majority of the bank's loans were made to borrowers within its assessment areas. Overall, examiners found that the geographic distribution of the bank's loans reflected excellent penetration throughout its assessment areas. Examiners also found that, given the product lines offered by the bank, the distribution of its borrowers reflected excellent penetration among borrowers of different income levels and businesses and farms of different sizes.

Examiners also determined that First Midwest Bank exhibited an excellent record of serving the credit needs of low-income individuals and areas and of very small businesses and farms. The bank was found to have made extensive use of innovative and flexible lending practices, such as products designed to improve borrowers' credit histories, loan modifications for LMI borrowers and businesses, and lending through federal and state programs that support small businesses and homeownership. In addition, examiners noted that First Midwest Bank was a leader in making community development loans, particularly in the Chicago market. Examiners found that the bank originated loans that resulted in a meaningful impact in its assessment areas and actively sought community development lending opportunities.

Examiners found First Midwest Bank's delivery systems to be readily accessible to all sections of the bank's assessment areas, including to individuals of different income levels. Examiners noted that the bank's business hours and services did not vary in a way that inconvenienced any portion of its assessment areas. Examiners also noted that the bank was a leader in providing community development services and that it conducted a variety of financial literacy and technical assistance programs in its assessment areas.

First Midwest Bank's Efforts since the First Midwest Bank Evaluation

First Midwest represents that, since the First Midwest Bank Evaluation, First Midwest Bank has remained active in marketing products and services specifically designed for LMI individuals and that it regularly participates in federal and state loan programs that are

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

[32] The First Midwest Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) in 2012 and 2013. The evaluation period for community development lending, investments, and services was August 27, 2012, through March 2, 2015.

[33] The First Midwest Bank Evaluation included full-scope evaluations of the Chicago-Joliet-Naperville, Illinois-Indiana-Wisconsin Multistate Metropolitan Statistical Area ("MSA"); the Davenport-Moline-Rock Island, Iowa-Illinois MSA; and Non-Metropolitan Illinois (consisting of Knox and La Salle counties). Limited-scope evaluations were performed in the Champaign-Urbana, Illinois, MSA and the Danville, Illinois, MSA.

structured to accommodate community credit needs. Since its last evaluation, First Midwest Bank has made a significant amount of community development loans and substantial qualified community development investments. First Midwest represents that the bank has provided financial educational resources such as classes and direct counseling to individuals within its assessment areas, many of whom have limited financial literacy or credit impediments. First Midwest also represents that the bank has collaborated with community organizations that promote initiatives such as homeownership and financial literacy.

CRA Performance of SB&T

SB&T received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of October 27, 2014 ("SB&T Bank Evaluation"),[34] with a rating of "High Satisfactory" for the Lending Test, "Low Satisfactory" for the Investment Test, and "Outstanding" for the Service Test.[35]

Examiners concluded that SB&T's overall lending levels reflected good responsiveness to credit needs in its assessment area. Examiners noted that a substantial majority of the bank's small business and home mortgage loans were made in its assessment area. Examiners found that, given the products offered by the bank, its distribution of borrowers reflected good penetration among businesses of different sizes and retail customers of different income levels. Examiners also found that the geographic distribution of the bank's loans reflected adequate penetration throughout its assessment area. In addition, examiners noted that the bank made use of flexible lending products, including home mortgage loan products designed for LMI individuals. Examiners also noted that the bank made a relatively high level of community development loans. According to examiners, bank employees and management maintained contact with a variety of community-based organizations, which facilitated the bank's awareness of community development opportunities.

Examiners found that SB&T made a reasonable amount of community development investments based on the bank's capacity and the community development needs present in its assessment area. Examiners also found that SB&T was a leader in providing community development services, particularly in support of financial literacy initiatives to LMI individuals. In addition, examiners found the bank's delivery systems to be reasonably accessible to essentially all portions of the institution's assessment areas. Examiners also found that the bank's services, including its business hours, did not vary in a way that inconvenienced any portions of its assessment area.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. First Midwest represents that it plans to continue its current offering of products and services upon consummation of the proposal. First Midwest represents that customers of Standard would have access to a complement of products and services that are more expansive than those currently available to Standard customers, including broader types of commercial and consumer banking products and services, and a more robust online and mobile banking services platform. First Midwest

[34] The SB&T Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) from January 1, 2012, through June 30, 2014. The evaluation period for community development loans, investments, and services was from August 29, 2011, through October 27, 2014.

[35] The SB&T Bank Evaluation included full-scope evaluations of DuPage, Grundy, and Will counties in the Chicago-Joliet-Naperville, Illinois, Metropolitan Division; and Lake and Porter counties in the Gary, Indiana, Metropolitan Division.

represents that customers of Standard would gain access to capital market and treasury management services. In addition, First Midwest asserts that customers of both institutions would benefit from a more expansive branch network. Following the proposed transaction, First Midwest represents that it will continue its existing CRA programs and initiatives and expand those programs and initiatives to markets currently served by SB&T. First Midwest also represents that it plans to further support the availability of residential loans to LMI individuals by hiring at least five additional community development lending officers who will operate throughout First Midwest Bank's assessment areas.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act and the Bank Merger Act to require the Board to consider a proposal's "risk to the stability of the United States banking or financial system."[36]

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

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, First Midwest would have approximately $13.4 billion in consolidated assets and, by any of a number of alternative measures of firm size, First Midwest would not be likely to pose systemic risks. The Board generally presumes that a proposal that results in a firm with less than $25 billion in consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in

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

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

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

interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

Establishment of Branches

First Midwest Bank has applied under section 9 of the FRA to establish branches at the current locations of SB&T.[39] The Board has assessed the factors it is required to consider when reviewing an application under that section.[40] Specifically, the Board has considered First Midwest Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

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

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

By order of the Board of Governors, effective November 10, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

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[39] *See* 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, state member banks may retain any branch following a merger that was a branch of any bank participating in the merger prior to February 25, 1927, or under state law, may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. *See* 12 U.S.C. §§ 36(b)(2) and (c). Upon consummation, all of First Midwest Bank's branches would be permissible under applicable state law. *See* 205 Ill. Comp. Stat. 5/5(15)(a); Ind. Code § 28-2-13-19; Iowa Code Ann. § 524.1201.

[40] 12 U.S.C. § 322; 12 CFR 208.6.

Appendix

Illinois Branches to Be Established

1. 7800 West 95th Street, Hickory Hills, Illinois
2. 282 North Weber Road, Bolingbrook, Illinois
3. 1968 Sibley Boulevard, Calumet City, Illinois
4. 10635 South Ewing Avenue, Chicago, Illinois
5. 3747 North Clark Street, Chicago, Illinois
6. 836 West Irving Park Road, Chicago, Illinois
7. 20 South Kankakee Street, Coal City, Illinois
8. 2400 West 95th Street, Evergreen Park, Illinois
9. 128 Depot Street, Gardner, Illinois
10. 19997 South La Grange Road, Frankfort, Illinois
11. 2398 Essington Road, Joliet, Illinois
12. 16545 West 159th Street, Lockport, Illinois
13. 8601 West Ogden Avenue, Lyons, Illinois
14. 515 U.S. Route 6, Minooka, Illinois
15. 1111 West U.S. Route 6, Morris, Illinois
16. 1433 Lisbon Street, Morris, Illinois
17. 1607 North Aurora Road, Naperville, Illinois
18. 456 Nelson Road, New Lenox, Illinois
19. 8380 West Cermak Road, North Riverside, Illinois
20. 15901 South Central Avenue, Oak Forest, Illinois
21. 4001 West 95th Street, Oak Lawn, Illinois
22. 4700 West 111th Street, Oak Lawn, Illinois
23. 15900 South Wolf Road, Orland Park, Illinois
24. 9700 West 131st Street, Palos Park, Illinois
25. 11901 Southwest Highway, Palos Park, Illinois
26. 970 Brook Forest Avenue, Shorewood, Illinois
27. 1 West Roosevelt Road, Villa Park, Illinois
28. 1005 South Water Street, Wilmington, Illinois

Indiana Branches to Be Established

1. 755 Indian Boundary Road, Chesterton, Indiana
2. 4518 Indianapolis Boulevard, East Chicago, Indiana
3. 7007 Calumet Avenue, Hammond, Indiana
4. 2930 Ridge Road, Highland, Indiana
5. 2090 East Commercial Avenue, Lowell, Indiana
6. 579 West Lincoln Highway, Merrillville, Indiana
7. 9321 Wicker Avenue, Saint John, Indiana

BOK Financial Corporation
Tulsa, Oklahoma

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2016–19 (November 15, 2016)

BOK Financial Corporation ("BOK"), Tulsa, Oklahoma, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire MBT Bancshares, Inc. ("MBT"), and thereby indirectly acquire Missouri Bank and Trust Company of Kansas City ("MBT Bank"), both of Kansas City, Missouri. Following the proposed acquisition, MBT Bank would be merged into BOK's subsidiary bank, BOKF, National Association ("BOK Bank"), Tulsa, Oklahoma.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 25404 (April 28, 2016)).[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.

BOK, with consolidated assets of approximately $32.1 billion, is the 55th largest insured depository organization in the United States. BOK controls approximately $20.8 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[5] BOK controls BOK Bank, which operates in Arkansas, Arizona, Colorado, Kansas, Maryland, Missouri, New Mexico, Oklahoma, and Texas. BOK Bank is the 303rd largest insured depository institution in Missouri, controlling deposits of approximately $1.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[6] BOK Bank is the 34th largest insured depository institution in Kansas, controlling deposits of approximately $419.3 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

MBT, with consolidated assets of approximately $601.9 million, is the 1,203rd largest insured depository organization in the United States. MBT controls approximately $555.6 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. MBT controls MBT Bank, which operates in Missouri and Kansas. MBT Bank is the 52nd largest insured depository institution in Missouri, controlling deposits of approximately $407.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. MBT Bank is the 101st largest insured depository institution in Kansas, controlling deposits of approximately $128.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, BOK would become the 54th largest depository organization in the United States, with consolidated assets of approximately $32.7 billion,

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1 12 U.S.C. § 1841 *et seq*

2 12 U.S.C. § 1842.

3 The merger of MBT Bank into BOK Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 19, 2016.

4 12 CFR 262.3(b).

5 Asset data are as of June 30, 2016, and deposit data are as of June 30, 2015, unless otherwise noted.

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

which represent less than 1 percent of the total assets of insured depository organizations in the United States. BOK would control consolidated deposits of approximately $21.4 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Missouri, BOK Bank would become the 52nd largest depository institution, controlling deposits of approximately $409.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In Kansas, BOK Bank would become the 26th largest depository institution, controlling deposits of approximately $547.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

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

For purposes of the BHC Act, the home state of BOK is Oklahoma, and MBT Bank's home state is Missouri.[10] MBT Bank also operates in Kansas. BOK is well capitalized and well managed under applicable law, and BOK Bank has an "Outstanding" Community Reinvestment Act ("CRA")[11] rating. Missouri and Kansas have five-year minimum age requirements, and MBT Bank has been in existence for more than five years.[12]

On consummation of the proposed transaction, BOK would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in Missouri and Kansas, the only states in which BOK and MBT have overlapping banking operations. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

7 12 U.S.C. § 1842(d)(1)(A).

8 12 U.S.C. § 1842(d)(1)(B).

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

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

11 12 U.S.C. § 2901 *et seq.*

12 *See* RSMo § 362.077(1); K.S.A. 9-541(a).

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[13] The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[14]

BOK and MBT have subsidiary depository institutions that compete directly in the Kansas City, Missouri, banking market ("Kansas City market").[15] The Board has considered the competitive effects of the proposal in the banking market. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that BOK would control;[16] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[17] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Kansas City market. On consummation of the proposal, the Kansas City market would remain unconcentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in this market would be small, and numerous competitors would remain in the banking market.[18]

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

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[13] 12 U.S.C. § 1842(c)(1).

[14] 12 U.S.C. § 1842(c)(1)(B).

[15] The Kansas City market is defined as Cass, Clay, Jackson, Lafayette, Platte, and Ray counties, all of Missouri, and Franklin, Johnson, Leavenworth, Miami, Wyandotte, and Linn (excluding the towns of Blue Mound and Prescott) counties, all of Kansas. The market also includes select towns in Clinton, Johnson, and Bates counties, all of Missouri.

[16] Local deposit and market share data are as of June 30, 2015, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See*, *e.g.*, *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See*, *e.g.*, *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

[18] BOK operates the 22nd largest depository institution in the Kansas City market, controlling approximately $420.6 million in deposits, which represent 0.9 percent of market deposits. MBT operates the 16th largest depository institution in the same market, controlling deposits of approximately $536.4 million, which represent about 1.2 percent of market deposits. On consummation of the proposed transaction, BOK would become the 10th largest depository organization in the market, controlling deposits of approximately $957.0 million, which represent approximately 2.1 percent of market deposits. The HHI for the Kansas City market would increase by 2 points to 798, and 117 competitors would remain in the market.

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 Kansas City market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

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

BOK and MBT are both well capitalized, and the combined entity would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company acquisition that is structured as an exchange of shares for cash, with a subsequent merger of the subsidiary depository institutions.[19] The asset quality, earnings, and liquidity of BOK Bank and MBT Bank are consistent with approval, and BOK appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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

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

[19] To effect the transaction, each share of MBT common stock would be converted into a right to receive cash, based on an exchange ratio. Following the acquisition of 100 percent of the MBT shares, BOK will cause MBT to dissolve and MBT Bank to merge with and into BOK Bank, with BOK Bank as the surviving entity. BOK has the financial resources to fund the transaction.

sectors, and its risk-management program appears consistent with approval of this expansionary proposal.[20]

The Board also has considered BOK's plans for implementing the proposal. BOK has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. BOK would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, BOK's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BOK plans to integrate MBT's existing management and personnel in a manner that augments BOK's management.[21]

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

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

[20] On September 9, 2016, the Securities and Exchange Commission ("SEC") announced that it had settled charges against BOK regarding allegations that BOK Bank's Corporate Trust Department, primarily through a senior executive, concealed problems and red flags from investors in certain bond offerings for which BOK Bank served as indenture trustee and dissemination agent between 2007 and 2015. *See BOK Bank*, SEC Order Instituting Cease-and-Desist Proceedings, File No. 3-17533 (September 9, 2016) (the "Order"). According to the announcement, BOK promptly terminated the responsible employee following an internal investigation and reported the matter to the SEC. Further, the Order notes that BOK has cooperated with the SEC in the investigation and has promptly undertaken a number of remedial acts to improve controls within BOK Bank's Corporate Trust Department. The Board has consulted with the OCC, the bank's primary federal supervisor, regarding this matter. The OCC considered the matter in connection with its review of the proposed merger of MBT Bank into BOK Bank, and determined that the proposed merger will not impede BOK Bank's remediation efforts.

[21] On consummation, ten individuals currently serving as senior management officials at MBT or MBT Bank will serve as senior management officials at BOK Bank, including MBT Bank's chief executive officer, who will be retained as BOK Bank's Chairman of the Kansas City market.

[22] 12 U.S.C. § 1842(c)(2).

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

teristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

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

Public Comment Regarding the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of residential real estate loans made to minority borrowers, as compared to white borrowers, by BOK Bank in the Kansas City, Missouri-Kansas, Metropolitan Statistical Area ("Kansas City MSA"); the Houston, Texas, MSA ("Houston MSA"); and the Phoenix, Arizona, MSA ("Phoenix MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2014.[25] The commenter further alleged that BOK Bank confined African American and Hispanic borrowers to government loan programs instead of conventional loan products in the Kansas City MSA. Also, the commenter criticized the rate at which BOK Bank denied applications by African Americans and/or Hispanics, compared to the rate of denials for whites, for home refinance loans in the Houston and Phoenix MSAs, as reported under HMDA for 2014. In addition, the commenter generally alleged that BOK Bank has a weak record of lending to people of color and low-income individuals and a weak record of consumer compliance.[26]

Businesses of the Involved Institutions and Response to the Comment

BOK, through BOK Bank and its nonbanking subsidiaries, provides a broad range of financial products and services to consumers and businesses. Through several geographic banking divisions, BOK serves customers in Arizona, Arkansas, Colorado, Kansas, Maryland, Missouri, New Mexico, Oklahoma, and Texas. Products and services provided by BOK include a variety of loan and deposit products; cash management services; fiduciary services; commercial risk-management products; mortgage banking; brokerage and trading services to middle-market businesses, financial institutions, and consumers; and investment advisory services.

MBT Bank offers a broad range of consumer and commercial banking products and services through four locations in the Kansas City MSA. Its products and services include checking, savings, money market, and certificate of deposit accounts; mortgage and other consumer lending products; business services and lending; and international banking services.

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[25] The commenter's concerns focused on the number of home purchase loans that BOK Bank offered to African Americans and Hispanics compared to whites in the Kansas City MSA, the number of home refinance loans that BOK Bank offered to African Americans compared to whites in the Houston MSA, and the number of home refinance loans offered to African Americans and Hispanics compared to whites in the Phoenix MSA.

[26] The commenter also cited an anonymous customer complaint posted to a public online forum in 2010 regarding alleged problems the customer had closing an account at BOK Bank and overdraft fees charged by the bank on the account. The OCC reviewed the comment as part of its review of BOK Bank's Bank Merger Act application but could not verify the customer complaint due to the lack of information contained in the posting.

In response to the comment, BOK represents that BOK Bank has maintained an excellent record of providing financial services to minority and LMI individuals, is strongly committed to complying with fair lending laws, and actively engages in monitoring, testing, and maintaining internal controls to ensure compliance with such laws. BOK notes that its presence in the Kansas City, Houston, and Phoenix MSAs is limited; however, BOK asserts that its management is committed to ensuring fair lending in all markets and is deploying strategies to increase its lending to minorities and in LMI communities.

With respect to BOK Bank's lending in the Kansas City MSA, BOK represents that BOK Bank outpaced "aggregate peer" performance in home-purchase-application rates and origination rates for African American and Hispanic borrowers, as reflected in 2014 HMDA data, and that BOK Bank's denial rates to such borrowers were comparable to those of its peers. BOK also asserts that no disparities were revealed through its analyses to indicate that African American or Hispanic borrowers were steered by BOK Bank to government loan programs instead of conventional loan products, as alleged by the commenter.

In the Houston MSA, BOK acknowledges that the bank lagged behind peers in percentage of total refinance applications received from African Americans in 2014; however, BOK represents that the bank exceeded the aggregate peer threshold with respect to application rates from Hispanic borrowers. BOK also represents that home- purchase loan origination rates were higher than the aggregate peer data in all demographic categories. Regarding the Phoenix MSA, BOK represents that BOK Bank outperformed aggregate peer data in terms of the percentage of home refinance loans originated to African American and Hispanic borrowers, compared to applications received from such borrowers in 2014. BOK also represents that it originated home purchase loans to African Americans and Hispanics at a higher rate than the peer average. Regarding the allegations of high denial rates for refinance loan applications in the Houston and Phoenix MSAs in 2014, BOK represents that its decisions with respect to the applications received reflected judgments based on credit history, collateral, debt-to-income ratios, and other nondiscriminatory factors.[27]

In each of the Kansas City, Houston, and Phoenix MSAs, BOK represents that BOK Bank engages in a number of outreach activities targeted to minority individuals and communities. For example, in the Kansas City MSA, BOK represents that BOK Bank's employees provide financial literacy classes to Spanish speakers and work with organizations that promote the development and financing of homes in LMI areas and with organizations that provide scholarships to minority students. BOK also represents that it expects additional opportunities to arise in the Kansas City MSA following the proposed transaction due to the increased resource capacity of BOK Bank and the proximity of MBT Bank's branches to LMI and minority communities. In the Phoenix MSA, BOK represents that BOK Bank sponsors and/or provides community service to several community organizations focused on supporting minority communities. In the Houston MSA, BOK asserts that it has appointed an employee as Hispanic Market Coordinator to facilitate identifying and meeting the financial service needs of the Hispanic community, and its employees also provide community service to a number of organizations that serve minority communities.

BOK represents that it is implementing a strategy to expand the bank's lending to minorities and LMI individuals. The strategy includes setting minority and LMI lending goals in all full-scope assessment areas and the targeting of resources to areas that do not

[27] BOK represents that denial rates for white, African American, and Hispanic refinance applicants were all above aggregate peer denial rates in the Houston and Phoenix markets, which BOK argues indicates a consistent underwriting program regardless of race.

meet the goals; hiring and deploying LMI loan officers in various markets;[28] developing an enterprise-wide marketing strategy to target LMI communities; hiring an LMI/CRA Program Manager within the mortgage division to facilitate lending initiatives that benefit LMI and minority borrowers; and creating a Community Development Advisory Committee in major markets.

BOK also represents that BOK Bank offers an extensive suite of residential lending products that benefit LMI individuals and geographies across all markets of the bank. Such products include low-down-payment products, government-sponsored loan programs, down-payment assistance programs, and loan modifications. BOK represents that BOK Bank has deployed marketing strategies to target its products to LMI and minority communities through search engine, direct mail, and e-mail marketing efforts.

Further, BOK asserts that it has policies and procedures to ensure compliance with fair lending laws and to monitor fair lending risk, including an enterprise-wide fair lending risk assessment, which is updated quarterly; ongoing HMDA and fair lending monitoring and testing; comparative analysis to identify specific loans that may exhibit heightened fair lending risk; escalation and reporting of fair lending results to senior management; regular monitoring of customer complaints for potential fair lending concerns; and a third-party due diligence program that evaluates third-party service providers that may present fair lending risk.

Records of Performance Under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the applicant's response to comments. In particular, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.[29] In this case, the Board considered the supervisory views of and information provided by the OCC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[30] An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

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

[28] BOK represents that it deploys LMI loan officers in various markets to assist LMI and minority individuals in obtaining mortgage financing and to conduct outreach in targeted communities. The loan officers also have a specific compensation plan that encourages LMI lending. BOK represents that BOK Bank has employed an LMI loan officer in the Kansas City market and is in the process of hiring such loan officers to serve the Phoenix and Houston MSAs.

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

[30] 12 U.S.C. § 2906.

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 amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of the institution's lending in its assessment areas and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[31] (4) the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when 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.[32] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of BOK Bank

BOK Bank was assigned an overall rating of "Outstanding" at its most recent CRA performance evaluation by the OCC, as of October 28, 2013 ("BOK Bank Evaluation").[33] The bank received "Outstanding" ratings for both the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.[34] The Board has consulted with the OCC regarding the BOK Bank Evaluation.

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

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

[33] The BOK Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported, pursuant to HMDA, and small business loans reported under CRA data collection requirements for 2011 and 2012, except for loans in Maryland and Oklahoma, where review periods were January 26, 2009, through December 31, 2012, and January 1, 2009, through December 31, 2012, respectively. The evaluation period start date for community development lending, investments, and services was January 1, 2011, for all areas except Oklahoma and Maryland, which had start dates of September 21, 2009, and February 26, 2009, respectively. The evaluation period end date for community development lending, investments, and services in all rating areas was October 28, 2013.

[34] The BOK Bank Evaluation included full-scope evaluations of the Kansas City, Multi-State MSA (composed of Johnson and Wyandotte counties in Kansas and Jackson County, Missouri); the Phoenix, Arizona, MSA (composed of Maricopa County); the Fayetteville, Arkansas, MSA (composed of Benton and Washington counties); the Denver, Colorado, MSA (composed of Adams, Arapahoe, Broomfield, Denver, Douglas, and Jefferson counties); the Albuquerque, New Mexico, MSA; the Oklahoma City, Oklahoma, MSA (composed of Canadian, Cleveland, and Oklahoma counties); the Tulsa, Oklahoma, MSA (composed of Creek, Rogers, Tulsa and Wagoner counties); the Howard County, Maryland, MSA; the Dallas, Texas, MSA (composed of Collin, Dallas, and Denton counties); the Fort-Worth, Texas, MSA (composed of Tarrant County); and the Houston, Texas, MSA (composed of Fort Bend and Harris counties). Limited scope evaluations were performed in the Bartlesville, Oklahoma, Non-MSA (composed of Washington County); the Enid, Oklahoma, Non-MSA (composed of Garfield County); the Eufaula, Oklahoma, Non-MSA (composed of McIntosh County); the Grove, Oklahoma, Non-MSA (composed of Delaware County); the McAlester, Oklahoma, Non-MSA (composed of Pittsburg County); the Muskogee, Oklahoma, Non-MSA (composed of Muskogee County); the

Examiners found that BOK Bank's overall lending activity was good. Examiners noted that the bank's community development lending was exceptionally strong and positively impacted the Lending Test in all rating areas. According to examiners, the bank's community development loans primarily supported affordable housing initiatives, activities that promoted economic development in the assessment areas, and activities that revitalized or stabilized LMI census tracts. Examiners also found that the bank originated a substantial majority of loans inside of its assessment areas. Overall, examiners found that geographic distribution of the bank's loans was adequate and borrower-income distribution was good, as evidenced by good distribution of home mortgage loans by borrower-income level.

In the Kansas City MSA, an area of concern for the commenter and the area affected by the proposed transaction, examiners found BOK Bank's lending activity to be excellent. Examiners found that geographic distribution of the bank's loans was adequate and that overall borrower-income distribution was excellent in the Kansas City MSA.

In both the Phoenix and Houston MSAs, the other areas of concern for the commenter, examiners found overall lending activity and borrower-income distribution to be adequate. Examiners found geographic distribution of loans to be very poor in the Phoenix MSA and poor in the Houston MSA; however, community development lending in both MSAs was found to be exceptionally strong and beneficial to the communities, including LMI areas and individuals. Further, examiners analyzed the bank's home mortgage and small business lending activity over the evaluation period in the bank's Arizona and Texas assessment areas to identify any gaps in the geographic distribution of loans; no unexplained gaps were found in these areas.

Examiners found that BOK Bank's overall investment performance was excellent, and they noted that the bank's investments primarily supported affordable housing, community services, and economic development in its assessment areas. Examiners also noted that the bank's investments were responsive to the identified needs in the communities served by the bank. Further, examiners found that BOK Bank's delivery systems were accessible to all portions of the bank's assessment areas, including LMI communities.[35] Examiners also found that the bank provided an overall adequate level of community development services in its assessment areas.

BOK Bank's Efforts Since the BOK Bank Evaluation

BOK represents that BOK Bank has continued to demonstrate responsiveness to credit needs in the bank's assessment areas. BOK asserts that BOK Bank has remained active in marketing a wide selection of products and services within its assessment areas, including products and services that benefit LMI and minority communities. BOK also represents that the bank has made a number of community development loans and investments to support affordable housing and small businesses in its assessment areas. BOK notes that the bank has engaged in various outreach efforts and community service opportunities with organizations that serve LMI persons and communities, including organizations that focus on financial education, economic development, and small business development.

Ponca City, Oklahoma, Non-MSA (composed of Kay County); the Stillwater, Oklahoma, Non-MSA (composed of Payne County); the Boulder, Colorado, MSA; the Santa Fe, New Mexico, MSA; and the Sherman-Dennison, Texas, MSA.

35 Examiners found the bank's branch distribution in the Kansas City MSA to be adequate and found its branch distribution in the Phoenix MSA to be good when considering its limited presence in each MSA. The examiners also noted that the branches were accessible to geographies and individuals of different income levels in both assessment areas. In the Houston MSA, examiners found the bank's branch distribution to be adequate and reasonably accessible to geographies and individuals of different income levels.

BOK represents that BOK Bank continues to develop its CRA program and evaluate CRA performance to determine if there are opportunities for improvement, including through the recent creation of a CRA Committee, which meets quarterly and has senior management participation. BOK represents that the CRA Committee reviews the bank's CRA performance levels and underlying CRA and HMDA data quality and integrity; communicates with key stakeholders; assesses the risk and impact of CRA and HMDA performance levels; and facilitates CRA planning and resources. BOK represents that the CRA Committee will also identify trends and propose recommended changes to strategic initiatives; identify compliance risks; and evaluate results of initiatives, business plans, models, and strategies.

CRA Performance of MBT Bank

MBT Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of July 29, 2013 ("MBT Bank Evaluation").[36] The bank received "Satisfactory" ratings for both the Lending Test and Community Development Test.

Examiners concluded that the bank demonstrated a satisfactory commitment to community reinvestment. Examiners noted that a substantial majority of the bank's small business and home mortgage loans were originated within the bank's assessment area, which reflected an excellent commitment to meeting the credit needs of its assessment area. Examiners also found that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout its assessment area and that the bank's loan-to-deposit ratio reflected a reasonable willingness to provide credit, given the bank's size, financial condition, and the credit needs of its assessment area. Examiners found that the bank's distribution of loans to borrowers of different incomes and businesses of different sizes was poor. However, examiners noted that MBT has a business focus, and MBT management indicated that there was substantial competition for small business loans to financially strong moderate-sized businesses in the assessment area.

Examiners also found that the bank's overall performance in community development activities in its assessment area was reasonable. Examiners concluded that the bank's community development performance demonstrated adequate responsiveness to the community development needs in its assessment area through community development loans, qualified investments, and community development services.

Views of the OCC

The Board has consulted with the OCC, the primary federal supervisor of BOK Bank, regarding the OCC's review of the proposed merger of BOK Bank and MBT Bank. The OCC conducted a review of the same comment that was submitted to the Board, taking into consideration BOK Bank's CRA, consumer compliance, and fair lending records.[37]

The Board consulted with the OCC regarding BOK Bank's record of compliance with fair lending laws and regulations and the bank's policies and procedures relating to fair

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[36] The MBT Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity based on the institution's loan trial report and HMDA data for 2011 and 2012. The MBT Bank Evaluation reviewed the bank's Kansas City MSA, which included Johnson and Wyandotte Counties in Kansas and Clay, Jackson, and Platte Counties in Missouri.

[37] The OCC's review did not result in findings related to fair lending that would warrant denial of the bank merger application; however, it will continue to monitor BOK Bank for fair lending issues as part of its ongoing supervisory process. *See* Letter from Stephen A. Lybarger, Deputy Comptroller for Licensing, OCC, to Tamara Wagman, Frederic Dorwart Lawyers (October 19, 2016).

lending and other consumer protection laws and regulations. BOK Bank intends to implement its consumer compliance policies and procedures at the combined organization following consummation of the transaction.

After a full review of the proposal, the OCC determined that the proposal met the standards of the Bank Merger Act and approved the proposal without conditions.

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. BOK represents that upon consummation of the proposal, existing customers of MBT would have access to a more expansive line of consumer products and services, including additional lending products that are beneficial to LMI borrowers. Specifically, BOK represents that it participates in several government-sponsored lending programs, partners with numerous entities to provide down-payment assistance programs and financial support for affordable housing, and offers second-chance checking accounts to customers.

BOK represents that the acquisition will make available expanded resources to the communities currently served by MBT. For example, BOK represents that MBT has applied limited resources to consumer lending to date and that the acquisition would result in additional mortgage lenders serving MBT's communities. Further, BOK represents that it intends to increase current levels of community development activity – both financially and through employee service – from the levels MBT and BOK engaged in as individual entities in the affected market. Moreover, BOK represents that customers of both institutions would benefit from a more expansive branch network. BOK has asserted that it has no plans to close or consolidate existing branches of either depository institution following consummation of the proposed transaction and that branches acquired as a result of the proposed transaction will allow for greater opportunities to serve LMI and minority consumers. Further, BOK represents that MBT customers will have access to a range of options for obtaining financial services, including a 24-hour "ExpressBank" customer phone service and online and mobile banking options.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."[38]

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

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[39] 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.[40]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. The proposal involves the acquisition of approximately $601.9 million in total assets. After consummation, BOK would have approximately $32.7 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than $2 billion in assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[41] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by BOK with all the conditions imposed in this Order, including receipt of all

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

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

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

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

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

By order of the Board of Governors, effective November 15, 2016.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under International Banking Act

Fédération des caisses Desjardins du Québec
Levis, Canada

Order Approving Establishment of a Branch
FRB Order No. 2016–20 (December 16, 2016)

Fédération des caisses Desjardins du Québec ("Federation"), Levis, Canada, has applied under section 7(d) of the International Banking Act of 1978 ("IBA")[1] to establish a federally licensed branch in Hallandale, Florida, as part of a corporate reorganization of its existing banking operations. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Florida (*Miami Herald*, October, 28, 2016). The time for submitting comments has expired, and the Board has considered all comments received.

Federation has determined to combine a number of its operations in Canada, resulting in a change in control over its existing banking operations in the United States. Federation is a depository institution subsidiary of The Desjardins Group ("Desjardins"), Levis, Canada. Desjardins, with consolidated assets of approximately $200.7 billion, is the 6th largest banking organization in Canada.[2] Desjardins is a cooperative network of financial institutions operating primarily in the province of Quebec, Canada. Desjardins owns all of Federation's shares. Federation controls Caisse centrale Desjardins du Québec ("CCD"), Montreal, Canada, a cooperative financial institution, as well as the nonbanking companies of Desjardins. CCD primarily provides clearing services and funding for the financial institution members of Desjardins. In the United States, CCD operates a federally licensed branch in Hallandale, Florida. Federation and CCD propose to amalgamate into Federation.[3] As a result of this combination, Federation would take over operation of CCD's existing U.S. branch. Federation is, and would remain, a qualifying foreign banking organization under Regulation K.[4]

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.[5] The Board also considers additional standards as set forth in the IBA and Regulation K.[6]

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1 12 U.S.C. § 3105(d).

2 Asset data and ranking information are as of June 30, 2016, and are based on the exchange rate on that date.

3 In addition, CCD owns a U.S. bank subsidiary, Desjardins Bank, National Association, through its subsidiary, Desjardins FSB Holdings, Inc., both of Hallandale, Florida.Desjardins and Federation have applied under section 3 of the Bank Holding Company Act for Federation to merge with CCD. This application is being processed by the Federal Reserve Bank of Atlanta under delegated authority.

4 12 CFR 211.23(a).

5 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisors receive sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other

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

The Federal Reserve previously has determined that Desjardins, Federation, and CCD are subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Autorité des marchés Financiers ("AMF").[7] Desjardins, Federation, and CCD remain supervised by the AMF on substantially the same terms and conditions.[8] Based on all the facts of record, it has been determined that, after the proposed transaction, Desjardins and Federation would continue to be subject to comprehensive supervision on a consolidated basis by their home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account. The AMF has no objection to the establishment of the proposed branch.

The Board has also considered the financial and managerial factors in this case. AMF's risk-based capital standards are consistent with those established by the Basel Capital Accord ("Basel Accord"). Federation's capital is in excess of the minimum levels that would be required by the Basel Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of Federation are considered consistent with approval, and Federation appears to have the experience and capacity to support the proposed branch. In addition, Federation has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general. Moreover, as noted above, the proposal represents the reorganization of existing banking operations.

Canada has enacted laws and regulations to deter money laundering that are consistent with Financial Action Task Force recommendations. Money laundering is a criminal offense in Canada, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout

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

6 12 U.S.C. § 3105(d)(3)-(4) and 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i)whether the bank's home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank's record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C.§ 3105(d)(3)(E).

7 *The Desjardins Group*, 90 *Federal Reserve Bulletin* 69 (2004).

8 At the time of the Board's prior CCS determination for Desjardins, the Quebec supervisory authority responsible for Desjardins was the Inspector General. Since 2003, the entity performing these functions has been restructured and renamed, with the core supervisory functions that were performed by the Inspector General at that time now performed by the AMF.

their worldwide operations. Federation has policies and procedures to comply with these laws and regulations, and Federation's compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on Federation's operations, the restrictions on disclosure in relevant jurisdictions in which Federation operates have been reviewed. Federation has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, Federation has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that Federation has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.[9] Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Federation in its home jurisdiction; the scope of Federation's activities, including the types of activities it proposes to conduct in the United States, and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising Federation in its home jurisdiction. Based on these and other factors, financial stability considerations for this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Federation as well as the terms and conditions set forth in this order, Federation's application to establish a branch in Florida is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.[10] Should any restrictions on access to information on the operations or activities of Federation and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Federation or its affiliates with applicable federal statutes, the Board may require termination of any of Federation's direct or indirect activities in the United States or, in the case of any such operations licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operations. Approval of this application also is specifically conditioned on compliance by Federation with the commitments made in connection with this application and with the conditions in this order.[11]

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[9] Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12U.S.C.§3105(d)(3)(E).

[10] 12 CFR 265.7(d)(12).

[11] The Board's authority to approve the establishment of branches parallels the continuing authority of the OCC to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed branch of Federation in accordance with any terms and conditions that the OCC may impose.

By order, approved pursuant to authority delegated by the Board, effective December 16, 2016.

Robert deV. Frierson
Secretary of the Board