



Legal Developments: Fourth Quarter, 2018

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Old National Bancorp
Evansville, Indiana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2018-22 (October 16, 2018)

Old National Bancorp, Evansville, Indiana ("Old National"), a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act")¹ has requested the Board's approval under section 3 of the BHC Act² to acquire and merge with Klein Financial, Inc. ("Klein"), and thereby indirectly acquire KleinBank, both of Chaska, Minnesota. Following the proposed acquisition, KleinBank would be merged into Old National's subsidiary bank, Old National Bank, Evansville, Indiana.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 36935 (July 31, 2018)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Old National, with consolidated assets of approximately \$17.5 billion, is the 96th largest insured depository organization in the United States.⁵ Old National controls approximately \$12.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Old National controls Old National Bank, which operates branches in Indiana, Minnesota, Illinois, Kentucky, Michigan, and Wisconsin. Old National is the 6th largest insured depository organization in Minnesota, controlling deposits of approximately \$1.7 billion, which represent 0.7 percent of the total deposits of insured depository institutions in that state.⁶

Klein, with consolidated assets of approximately \$2.0 billion, is the 414th largest insured depository organization in the United States. Klein controls approximately \$1.7 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of KleinBank into Old National Bank is subject to approval by the Office of the Comptroller of the Currency ("OCC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 12, 2018.

⁴ 12 CFR 262.3(b).

⁵ National asset data are as of June 30, 2018. National deposit, ranking, and market-share data are as of June 30, 2018, unless otherwise noted.

⁶ State deposit data are as of June 30, 2017.

depository institutions in the United States. Klein controls KleinBank, which operates only in Minnesota. Klein is the 7th largest insured depository organization in Minnesota, controlling deposits of approximately \$1.6 billion, which represent 0.7 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Old National would become the 91st largest insured depository organization in the United States, with consolidated assets of approximately \$19.5 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Old National would control consolidated deposits of approximately \$14.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ Old National would control deposits of approximately \$3.4 billion in Minnesota, which would represent 1.4 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.⁸ The Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁹ In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹⁰

For purposes of the BHC Act, the home state of Old National is Indiana, and KleinBank is located only in Minnesota.¹¹ Old National and Old National Bank are well capitalized and well managed under applicable law, and Old National Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹² Minnesota has no statutory minimum age requirement,¹³ and KleinBank has been in continuous existence for more than five years.

On consummation of the proposed transaction, Old National would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Minnesota does not impose a limit on the total amount of in-state

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

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1842(d)(1)(B).

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

¹² 12 U.S.C. § 2901 *et seq.*

¹³ Minn. Stat. 49.411 (2017)

deposits that a single banking organization may control. The Board has considered all other requirements under section 3(d) of the BHC Act, including Old National Bank's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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

Old National Bank and KleinBank compete directly in the Minneapolis/Saint Paul, Minnesota, banking market ("Minneapolis/Saint Paul market").¹⁶ The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that Old National would control;¹⁷ the concentration levels of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");¹⁸ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Minneapolis/Saint Paul market. On consummation of the proposal, the Minneapolis/Saint Paul market would remain highly concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines;

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

¹⁶ The Minneapolis/Saint Paul market is defined as Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota counties, Minnesota; Lent, Chisago Lake, Shafer, Wyoming, and Franconia townships in Chisago County, Minnesota; Blue Hill, Baldwin, Orrock, Livonia, and Big Lake townships and the city of Elk River in Sherburne County, Minnesota; Monticello, Buffalo, Rockford and Franklin townships and the cities of Otsego, Albertville, Hanover and Saint Michael in Wright County, Minnesota; Derrynane, Lanesburgh, and Montgomery townships and Montgomery city in Le Sueur County, Minnesota; and Hudson township in Saint Croix County, Wisconsin.

¹⁷ State deposit and market share data are as of June 30, 2017, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁸ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

however, the change in HHI would be small, and numerous competitors would remain in the market.¹⁹

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the Minneapolis/Saint Paul 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.²⁰ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Old National and Old National Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.²¹ The asset quality, earnings, and liquidity of both Old National Bank and KleinBank are consistent with approval, and Old National appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

¹⁹ Old National operates the 6th largest depository institution in the Minneapolis/Saint Paul market, controlling approximately \$1.67 billion in deposits, which represent approximately 0.90 percent of market deposits. Klein operates the 8th largest depository institution in the same market, controlling deposits of approximately \$1.44 billion, which represent approximately 0.77 percent of market deposits. On consummation of the proposed transaction, Old National would become the 5th largest depository organization in the market, controlling deposits of approximately \$3.12 billion, which represent approximately 1.68 percent of market deposits. The HHI for the Minneapolis/Saint Paul market would increase by 1 point to 3141, and 124 competitors would remain in the market.

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

²¹ At the effective time of the merger of Klein with and into Old National, each share of Klein common stock that is issued and outstanding would be converted into a right to receive 7.92 shares of Old National common stock. Old National has the financial resources to effect the proposed transaction.

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 Old National, Klein, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Old National; 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.

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

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

Based on all the facts of record, including Old National's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Old National and Klein 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, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal bank supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operations,²³ and requires the appropriate federal bank 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 characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by

²² 12 U.S.C. § 1842(c)(2).

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Old National Bank and KleinBank; the fair lending and compliance records of both banks; the supervisory views of the OCC and the Consumer Financial Protection Bureau ("CFPB") with respect to Old National Bank, and the Federal Deposit Insurance Corporation ("FDIC") with respect to KleinBank; confidential supervisory information; information provided by Old National; and the public comments on the proposal.²⁵

Public Comments on the Proposal

In this case, a commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Old National Bank to, and in the rate of denials for home mortgage applications from, African Americans as compared to whites in the Evansville and Indianapolis Metropolitan Statistical Areas ("MSAs"), based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA").²⁶ This commenter also criticized the branch closure practices of Old National Bank. Another commenter requested that Old National's proposed acquisition include a forward-looking community benefits plan.²⁷ Both commenters also cited obligations imposed on KleinBank under a May 2018 settlement agreement with the Department of Justice, related to alleged redlining and other discriminatory behavior of KleinBank (the "DOJ Settlement"). One commenter requested additional information about the steps KleinBank has taken to meet the conditions of the DOJ Settlement and about how Old National would comply with the terms of the DOJ Settlement once it integrates Klein.

Businesses of the Involved Institutions and Response to the Public Comments

Old National Bank is a full-service bank that offers a comprehensive array of banking, trust, investment, leasing, mortgage, and cash management products and services to individual customers and commercial enterprises of all sizes, through its network of branches. KleinBank is a commercial bank that offers a wide range of loan products for commercial, residential real estate, agricultural, and consumer purposes, in addition to various types of retail deposit products.

In response to the commenters' allegations, Old National asserts that approval of the proposed transaction is warranted based on Old National Bank's CRA performance evaluation. Old National notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, collateral value, credit scores, and other factors relevant to credit decisions. Old National also asserts that HMDA data do not reflect the

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

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. See, e.g., *HarborOne Mutual Bankshares*, FRB Order No. 2018-18 at 10 n.26 (September 12, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *Howard Bancorp, Inc.*, FRB Order No. 2018-05 at 9 n. 21 (February 12, 2018); *Sandy Spring Bancorp, Inc.*, FRB Order No. 2017-32 at 12 n.31 (November 22, 2017); *First Midwest Bancorp, Inc.*, FRB Order No. 2016-18 at 11 n.28 (November 10, 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.

range of Old National Bank's lending activities and efforts within the communities it serves. Old National represents that it is committed to providing reasonable access to its delivery systems throughout its assessment areas and does not anticipate any branch closures as a result of this transaction.

The terms of the DOJ Settlement require KleinBank to expand its banking services in predominantly minority neighborhoods in the Minneapolis area, including by investing in a loan subsidy fund to increase the amount of extended credit and by engaging in advertising, outreach, financial education, and credit repair. Old National represents that KleinBank has made progress in fulfilling its obligations in this regard. Old National acknowledges that the DOJ Settlement terms are binding on KleinBank's successors and transferees, and Old National represents that it is committed to fulfilling the terms of the settlement agreement and ensuring that the needs of the communities currently served by KleinBank are met. Old National notes that Old National Bank's fair lending policies, programs, and reviews would apply at the combined entity following consummation of the transaction.

Records of Performance under the CRA

The CRA requires that the appropriate federal bank supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁸ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal bank supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Old National Bank and KleinBank, in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;²⁹ (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.³⁰ Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified invest-

²⁸ 12 U.S.C. § 2906.

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

³⁰ See 12 CFR 228.22(b).

ments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.³¹

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 Old National Bank

Old National Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of February 13, 2017 (“Old National Bank Evaluation”).³³ The bank received a “High Satisfactory” rating for the Lending Test, an “Outstanding” rating for the Investment Test, and a “High Satisfactory” rating for the Service Test.³⁴ Old National's performance in the state of Indiana was weighted most heavily by examiners due to the bank's volume of lending and deposit activity in this area.

Examiners found that Old National Bank's geographic distribution of loans was good, the geographic distribution of home mortgage loans was adequate, and the geographic distribution of small loans to businesses was excellent. Examiners noted that, overall, the distribution of loans by income level of the borrower and of home mortgage loans by income level of the borrower was good. Examiners found the bank's distribution of loans to businesses of different revenue sizes to be adequate.

Examiners found that Old National Bank originated an overall excellent level of qualified community development investments that were generally responsive to community needs. Examiners found that this had a significantly positive impact on lending performance for most of the bank's AAs.

Overall, examiners concluded that bank branches were accessible to individuals and geographies of different income levels. Examiners also found that in most AAs, branch distribution was good or excellent.

In the Evansville-Henderson IN-KY MMSA,³⁵ which includes an area of concern to one of the commenters, examiners found Old National Bank's performance to be outstanding. Examiners noted that the geographic distribution of loans reflected good penetration throughout the Evansville-Henderson IN-KY MMSA, including overall good penetration for home mortgage loans and excellent penetration for small business loans. Examiners found that community development lending was responsive to identified needs and that the

³¹ See 12 CFR 228.21 *et seq.*

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

³³ The Old National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home purchase, home improvement, and home refinance mortgage loans reported pursuant to the HMDA and small loans to businesses and farms reported under the CRA from January 1, 2013, through December 31, 2015. The evaluation period for community development loans, investments, and services was January 1, 2013, through December 31, 2015.

³⁴ The Old National Bank Evaluation included, in each state and multistate metropolitan area (“MMA”) where the bank has an office, a full-scope review of a sample of AAs within that area.

³⁵ Multistate Metropolitan Statistical Area

geographic distribution of branch offices and the level of community development services were excellent. Examiners noted that Old National Bank exhibited excellent responsiveness to the community development investment needs in the AA. Examiners also found Old National Bank's branches to be accessible to all portions of the AA and that access to banking services in LMI geographies was excellent.

In the Indianapolis-Carmel-Anderson MSA, which includes another area of concern to one of the commenters, examiners found the bank's overall lending activity to be good, including for home mortgages and small business loans. Examiners concluded that the bank's record of opening and closing branches had adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners nevertheless found that the services offered and hours of operation were comparable among locations regardless of income level of the geography and that Old National Bank had made adequate use of alternative delivery systems through telephone and on-line banking, electronic bill pay, and mobile banking options.

Old National's Efforts since the Old National Bank Evaluation

Old National states that, since the Old National Bank Evaluation, Old National Bank has engaged in significant activities to continue to improve its CRA performance. Specifically, the bank has funded grants and scholarships for several community organizations and made commercial loans to develop affordable housing, economic development, and community revitalization initiatives in LMI neighborhoods. Old National Bank also has made several CRA-eligible community development investments. Old National Bank's employees have provided technical support to nonprofit organizations that focus on developing affordable housing as well as to small businesses, and they have taught financial literacy.

CRA Performance of KleinBank

KleinBank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of November 19, 2015 ("KleinBank Evaluation").³⁶ The bank received a "High satisfactory" rating for the Lending Test, a "Needs to Improve" rating for the Investment Test, and "Low satisfactory" rating for the Service Test.³⁷

Examiners concluded that KleinBank's lending levels reflected good responsiveness to the AAs' credit needs, and a high percentage of loans was made in the AAs. Examiners considered that, collectively, the geographic distribution of small business, home mortgage, and small farm lending reflected adequate penetration throughout the AAs given demographic information, and the distribution of loans to borrowers reflected good penetration among businesses and farms of different sizes and individuals of different income levels, given the bank's product lines.

Examiners concluded that KleinBank had a poor level of qualified community development investments and grants, particularly those that are not routinely provided by private

³⁶ The KleinBank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans reported under the CRA from January 1, 2013, through November 18, 2015. The evaluation period for community development lending, investments, and services was April 8, 2013, through November 18, 2015.

³⁷ The KleinBank Evaluation included a review of the bank's Metro and Western AAs, which, collectively, consist of portions of Hennepin County and all of Anoka, Carver, Dakota, McLeod, Scott, Sherburne, Sibley, and Wright counties. All of these counties, with the exception of McLeod and Sibley counties, are part of the Minneapolis-Saint Paul-Bloomington, Minnesota-Wisconsin MSA. The KleinBank Evaluation also included a review of Chippewa, Lac qui Parle, and Yellow Medicine counties in south-central Minnesota.

investors. The bank demonstrated poor responsiveness to credit and community economic development needs and rarely used innovative or complex investments to support community development initiatives. Examiners found that the bank provided an adequate level of community development services with delivery systems that were reasonably accessible to all portions of its AAs. Examiners considered that the institution's opening and closing of branches generally had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Examiners concluded that services (including business hours) did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and individuals.

Klein's Efforts since the KleinBank Evaluation

Old National represents that, since the KleinBank Evaluation, KleinBank has sought to improve its CRA performance and address the terms of the DOJ settlement. Specifically, the bank has developed several key partnerships with communities in majority-minority census tracts and is in the process of formalizing a financial assistance program to increase the amount of credit extended to minority communities. In addition, the bank has submitted a proposal for advertising, outreach, financial education, and credit repair initiatives to the DOJ, hired a community development officer to oversee the bank's lending in predominantly minority communities, and conducted employee training with respect to fair lending.

Views of the OCC, FDIC, and CFPB

In its review of the proposal, the Board consulted with the OCC and FDIC, respectively, regarding the CRA, consumer compliance, and fair lending records of Old National Bank and KleinBank. In addition, the Board consulted with the CFPB regarding Old National Bank's consumer compliance and fair lending records. The Board has considered the results of the most recent consumer compliance examinations of Old National Bank and KleinBank conducted by OCC and FDIC, respectively, which included reviews of the banks' compliance management programs and the banks' compliance with consumer protection laws and regulations. The OCC reviewed and approved the Bank Merger Act application related to the proposal and, in doing so, considered the same comments as were submitted to the Board on the BHC Act application.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Old National represents that, following consummation of the proposal, existing customers of KleinBank would benefit from access to an expanded array of products and services, including wealth management, investment, and student-focused options, and from an expanded branch network. In addition, Old National represents that commercial customers of Old National Bank and KleinBank would benefit from access to a wider array of treasury management services and Old National Bank's greater lending capacity.

Old National represents that it has programs, products, and activities that would meet the anticipated needs of Old National Bank's communities under the CRA, including the

needs of LMI areas and individuals. Old National further represents that it is committed to working closely with community leaders, government entities, and residents of the communities it serves to develop a sound and sensible structure for channeling resources and expertise to targeted economic development initiatives serving lower income households and small businesses and to meet community infrastructure requirements.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory views of the OCC, FDIC, and CFPB; confidential supervisory information; information provided by Old National; the public comments on the proposal; the terms of the DOJ Settlement; 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

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”³⁸

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

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in total assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴¹

³⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

³⁹ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

⁴⁰ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴¹ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in total assets and a pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.⁴² The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.⁴³ 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 Old National with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with the proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective October 16, 2018.

⁴² Old National and Klein both offer a range of retail and commercial banking products and services. Old National has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

⁴³ The Board construes the comments received on the proposal to include requests that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities in connection with this application. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' requests in light of all of the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Cadence Bancorporation Houston, Texas

Order Approving the Merger of Bank Holding Companies *FRB Order No. 2018-26 (December 7, 2018)*

Cadence Bancorporation (“Cadence”), Houston, Texas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire and merge with State Bank Financial Corporation (“SBFC”), Atlanta, Georgia, and thereby indirectly acquire SBFC’s subsidiary nonmember bank, State Bank and Trust Company (“State Bank”), Macon, Georgia. Following the proposed acquisition, State Bank would be merged into Cadence’s subsidiary bank, Cadence Bank, N.A. (“Cadence Bank”), Birmingham, Alabama.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 48425 (September 25, 2018)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Cadence, with consolidated assets of approximately \$11.3 billion, is the 132nd largest insured depository organization in the United States.⁵ Cadence controls approximately \$9.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cadence controls Cadence Bank, which operates branches in Alabama, Florida, Mississippi, Tennessee, and Texas.⁶

SBFC, with consolidated assets of approximately \$5.0 billion, is the 216th largest insured depository organization in the United States. SBFC controls approximately \$4.3 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. SBFC controls State Bank, which operates only in Georgia.

On consummation of the proposal, Cadence would become the 100th largest insured depository organization in the United States, with consolidated assets of approximately \$16.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Cadence would control consolidated deposits of approximately \$13.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁷ In Georgia, Cadence would become the 12th largest insured depository organization, controlling deposits of approximately \$4.4 billion, which would represent approximately 1.7 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of State Bank into Cadence Bank is subject to approval by the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The OCC approved the bank merger on October 4, 2018.

⁴ 12 CFR 262.3(b).

⁵ National asset data are as of June 30, 2018. National deposit, ranking, and market-share data are as of June 30, 2018, unless otherwise noted.

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

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

Interstate and Deposit Cap Analysis

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

For purposes of the BHC Act, the home state of Cadence is Mississippi and State Bank is located only in Georgia.¹¹ Cadence and Cadence Bank are well capitalized and well managed under applicable law, and Cadence Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹² Georgia’s three-year statutory minimum age requirement has been met.¹³

On consummation of the proposed transaction, Cadence would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. In addition, there are no states in which Cadence and SBFC have overlapping banking operations, such that a state deposit cap would apply. The Board has considered all other requirements under section 3(d) of the BHC Act, including Cadence Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.¹⁴ The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any banking market, unless the anticompetitive effects of the proposal are clearly outweighed in

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 12 U.S.C. § 1842(d)(2)(A) and (B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered, 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. Cadence (then named Community Bancorp LLC) became a bank holding company on March 4, 2011, when it acquired Cadence Bank. At that time, Mississippi was the state in which the total deposits of Cadence Bank were largest.

¹² 12 U.S.C. § 2901 *et seq.*

¹³ Ga. Code Ann. § 7-1-622(b)(1).

¹⁴ 12 U.S.C. § 1842(c)(1).

the public interest by the probable effect of the proposal in meeting the convenience and needs of the communities to be served.¹⁵

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

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

Financial, Managerial, and Other Supervisory Considerations

In reviewing 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.¹⁶ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Cadence and Cadence Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁷ The asset quality, earnings, and liquidity of both Cadence Bank and State Bank are consistent with approval, and Cadence appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Cadence, SBFC, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has

¹⁵ 12 U.S.C. § 1842(c)(1)(B).

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

¹⁷ At the effective time of the merger of SBFC with and into Cadence, each share of SBFC common stock that is issued and outstanding would be converted into a right to receive shares of Cadence common stock, based on an exchange ratio. However, no fractional shares of Cadence common stock would be issued in this share exchange, and such fractional shares would be cashed out. Cadence has the financial resources to effect the proposed transaction.

considered information provided by Cadence; 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.

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

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

Based on all the facts of record, including Cadence's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Cadence and SBFC 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.¹⁸ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal bank supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operations,¹⁹ and requires the appropriate federal bank 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.²⁰

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

¹⁸ 12 U.S.C. § 1842(c)(2).

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

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 Cadence Bank and State Bank; the fair lending and compliance records of both banks; the supervisory views of the OCC with respect to Cadence Bank and of the Federal Deposit Insurance Corporation (“FDIC”) with respect to State Bank; confidential supervisory information; information provided by Cadence; and the public comments on the proposal.

Public Comments on the Proposal

The Board received comments from five community organizations in Houston supporting the proposal. These commenters generally described the benefits that Cadence Bank provides to the communities it serves in the Houston area. For example, these commenters described Cadence Bank’s participation in various projects and partnerships that have benefited the community, including initiatives focused on enhancing economic mobility, financial services, and homeownership for LMI individuals. These commenters also highlighted the opening of a branch in a majority-minority LMI census tract in Houston, and a commenter praised Cadence Bank for funding a community development construction loan to develop a retail center in an LMI and minority community in Houston.

One commenter objected to the proposal on the basis of alleged disparities in the number of home mortgage loans made by Cadence Bank to African Americans in the Dallas-Plano-Irving, Texas Metropolitan Division (“Dallas MD”) and the Birmingham-Hoover, Alabama Metropolitan Statistical Area (“Birmingham MSA”), and to African Americans and Latinos in the Houston-The Woodlands-Sugar Land, Texas Metropolitan Statistical Area (“Houston MSA”), in each case as compared to whites in the relevant areas, based on data reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”).²¹ The commenter also cited a customer complaint alleging racist management practices at Cadence Bank and alleged that Cadence and SBFC are operating as a single entity prior to the Board’s approval of the proposal.²²

Businesses of the Involved Institutions and Response to Public Comments

Cadence Bank is a full-service bank that offers a comprehensive array of commercial and consumer banking, trust and investment, mortgage, and wealth management products and services to individual customers and commercial enterprises of all sizes, through its network of branches. State Bank, through its network of branches in Georgia, offers a range of traditional banking products and services to individuals and small and medium-sized businesses, as well as loans for commercial, residential real estate, agricultural, and consumer purposes.

In response to one commenter’s allegations regarding Cadence Bank’s home mortgage lending record, Cadence notes that HMDA data do not take into consideration other critical inputs, such as borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to credit underwriting decisions. Additionally, Cadence asserts that HMDA data do not reflect the range of Cadence Bank’s community reinvestment activities and efforts. Cadence asserts that Cadence Bank’s home mortgage lending record is a reflection of the bank’s having to rebuild inherited mortgage lending operations and the bank’s brief tenure and small market presence. In addition, Cadence indicates that

²¹ 12 U.S.C. § 2801 *et seq.*

²² The commenter’s allegation that the parties are operating as a single entity prior to the Board’s approval of the proposal related to an investor conference call during which the Chief Executive Officer of Cadence stated that he intended to refer a Cadence customer to a division of State Bank. The Board does not generally view a customer referral, without more, as constituting prior control of an entity.

Cadence Bank recently has taken measures to enhance its CRA compliance program significantly, including adopting a CRA plan through 2021, which includes annual CRA performance goals in each of the bank's CRA assessment areas ("AAs"). These goals include (a) increased mortgage lending to LMI borrowers and in LMI census tracts; (b) increased lending to small businesses and businesses in LMI census tracts; and (c) increased community development lending, investments, and services. Cadence represents that Cadence Bank is in the process of formally revising its CRA plan to include its fair lending action plan's annual performance goals for increased mortgage lending to minority borrowers and in minority census tracts in each of its AAs.

With respect to the Dallas MD, Cadence notes that Cadence Bank neither has any branches nor markets its products in Dallas and that the bank's limited lending activities in Dallas primarily result from referrals from other institutions in the market for a niche mortgage loan product (*i.e.*, a second-lien purchase money mortgage loan). Cadence asserts that only a small number of home loan applications were received from African American borrowers in the Dallas MD, and a majority of those loan applications were approved, but certain approved loans were not ultimately accepted by the borrowers. With respect to the Houston MSA, Cadence represents that only a small number of home purchase loan applications were received from African American and Hispanic borrowers, and that a majority of the loans were originated. Cadence further asserts that, as a result of ongoing efforts to increase its visibility in Houston minority communities, Cadence Bank has significantly increased the percentage of its home mortgage loan applications from, and originations to, minorities and in majority-minority census tracts in the Houston MSA in 2018.

Cadence represents that Cadence Bank has taken steps to improve its record of home mortgage lending to minorities in the Birmingham MSA, including establishing a partnership to construct new homes with affordable mortgages; forming a partnership to provide assistance to low-income residents for housing repairs or renovations in a majority African-American neighborhood; and working with minority real estate organizations to increase loan applications from and originations to minorities. Cadence represents that, as a result of these efforts, Cadence Bank has improved its record of home mortgage lending to African Americans and in majority-minority census tracts in the Birmingham MSA.

With respect to the customer complaint cited by a commenter, Cadence asserts that it maintains a robust customer complaint system. Under this system, all customer complaints are investigated and appropriately documented. When allegations or concerns about discrimination or unfair treatment are raised, such claims are escalated to the Fair Lending Officer and the Legal Department for analysis, response, and corrective action, as necessary.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case are the FDIC and the OCC.²³ In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit

²³ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

needs of its entire community, including LMI neighborhoods.²⁴ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Cadence Bank and State Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA AAs; (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;²⁵ (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.²⁶ Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.²⁷

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.²⁸ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Cadence Bank

Cadence Bank was assigned an overall "Satisfactory" rating at its most recent CRA Performance Evaluation by the OCC, as of July 27, 2015 ("Cadence Bank Evaluation").²⁹ The

²⁴ 12 U.S.C. § 2906.

²⁵ 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).

²⁶ *See* 12 CFR 228.22(b).

²⁷ *See* 12 CFR 228.21 *et seq.*

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

²⁹ The Cadence Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Due to merger and acquisition activity, the evaluation period start dates varied by AA. Accordingly, examiners

bank received “Low Satisfactory” ratings for the Lending Test, Investment Test, and Service Test.³⁰ Cadence Bank’s performance in Alabama and Texas was weighted most heavily by examiners.

Examiners noted that the Cadence Bank Evaluation was the first CRA examination for the bank following the combination of a severely troubled bank, a failed bank, and a niche-market bank. Examiners observed that the necessary allocation of resources to stabilize and improve the bank’s financial condition impeded the bank’s ability to devote significant resources to enhancing lending performance across the bank’s AAs and that these considerations compensated for the noted weaknesses in the volume and distribution of loans.

Examiners found that Cadence Bank’s geographic distribution of loans, including the distribution of home mortgage loans, was generally poor, although the distribution of small loans to businesses was good. Examiners noted that the overall distribution of loans and the distribution of home mortgage loans by income level of the borrower were adequate. Examiners also found that the performance of small loans to businesses was generally good. Examiners found that community development lending had a generally neutral impact on the Lending Test and noted that the bank focused community development lending on geographies where it lacked sufficient resources to markedly improve retail lending during the evaluation period.

Examiners found that Cadence Bank originated an overall adequate level of qualified community development investments that were generally responsive to community needs in the bank’s AAs. Examiners noted that the bank received consideration for a regional investment that did not serve any of the bank’s AAs, because the bank was generally responsive to needs in the AAs.

Overall, examiners concluded that bank branches ranged from reasonably accessible to accessible for limited portions of individual rating areas. Examiners noted that the bank’s hours did not show significant differences between branches located in areas with different income levels. Examiners found that Cadence Bank offered an adequate level of banking services through alternate delivery systems and that the bank’s opening and closing of branches throughout its AAs had not adversely impacted access to banking services.

In the Houston AA, an area of concern to a commenter, examiners found Cadence Bank’s performance to be adequate. In reaching this conclusion, examiners gave consideration to the impact that the restructuring of Cadence Bank’s entire mortgage origination function

reviewed home purchase, home improvement, and home refinance mortgage loans reported under HMDA and small loans to businesses reported under the CRA from October 1, 2010, through December 31, 2014, for the Birmingham MSA, Tuscaloosa, Alabama MSA (“Tuscaloosa MSA”), North Port-Bradenton-Sarasota, Florida MSA (“Sarasota MSA”), Georgia non-MSA Counties, Mississippi non-MSA Counties, Memphis, Tennessee-Mississippi-Arkansas MSA (“Memphis MSA”), and Nashville MSA AAs; from January 1, 2012, through December 31, 2014, for all AAs in Alabama and Florida, except for the Birmingham MSA, Tuscaloosa MSA, Homosassa Springs MSA, and Sarasota MSA AAs; and from September 14, 2012, to December 31, 2014, for the Houston MSA and San Antonio MSA AAs. The evaluation period for community development loans, the Investment Test, and the Service Test was from September 14, 2010, through December 31, 2014, for the Birmingham MSA, Tuscaloosa MSA, Sarasota MSA, Georgia non-MSA Counties, Mississippi non-MSA Counties, Memphis MSA, and Nashville MSA AAs; from November 11, 2011, through December 31, 2014, for all AAs within the states of Alabama and Florida, except for the Birmingham MSA, Tuscaloosa MSA, Homosassa Springs MSA, and Sarasota MSA AAs; and from September 14, 2012, through December 31, 2014, for the Houston MSA and San Antonio MSA AAs.

³⁰ The Cadence Bank Evaluation included a full-scope review of at least one AA in each state in which the bank has branches. Each of the bank’s 23 AAs was reviewed for lending, investment, and service performance using either full-scope or limited-scope examination procedures. At the time of the Cadence Bank Evaluation, Cadence Bank operated only one branch in Georgia, which has since been closed. The Cadence Bank Evaluation did not assess the bank’s performance in the Dallas MD because the bank did not operate a branch in the Dallas MD during the evaluation period.

had on its performance in Texas, as a complete overhaul of the support and sales teams, a rewriting of operating and underwriting policies and procedures, and the development of new customer relationships in the competitive Houston market were necessary during the evaluation period. Examiners considered Cadence Bank's overall lending activity in the Houston AA to be excellent, considering the strong competition for all types of loans in this AA. Although the distribution of home mortgage loans by geography and borrower income was considered very poor, examiners found that Cadence Bank's community development lending had a significantly positive impact on lending performance in the AA. Examiners observed that the bank's community development loans in the Houston AA exhibited excellent responsiveness to identified community development needs in the AA, including affordable housing, activities that revitalized or stabilized LMI geographies, and community services targeted to LMI individuals. The bank's performance under the Investment Test and the Service Test in the Houston AA was considered adequate. Examiners noted that the bank's branch distribution in the Houston AA was considered adequate because the location of most of the bank's branches resulted from its 2012 acquisition of a niche market bank, and the branches were on major thoroughfares near public transportation or LMI census tracts.

In the Birmingham AA, another area of concern to a commenter, examiners found Cadence Bank's overall lending activity to be adequate. Examiners concluded that Cadence Bank's home mortgage lending activity was poor and its small business lending activity was good, considering competition in the AA. Examiners found that the geographic distribution of home mortgage loans was poor, and the distribution of home mortgage loans by borrower income was adequate. Examiners rated Cadence Bank's performance under the Service Test and Investment Test in the Birmingham AA as adequate and noted that the bank's excellent performance in providing community development services compensated for poor retail performance with respect to the Service Test.

Cadence's Efforts since the Cadence Bank Evaluation

Cadence represents that, since the Cadence Bank Evaluation, Cadence Bank has engaged in significant activities to continue to improve its CRA performance, including adopting a CRA plan that runs through 2021, which includes annual CRA performance goals in each of the bank's AAs, as described above. In addition, Cadence represents that Cadence Bank has implemented a number of measures to better serve LMI and minority borrowers and communities, including, among others, hiring a new CRA officer and two regional CRA development officers, including one in Birmingham; launching a new mortgage product for owner-occupied primary residences of LMI borrowers or in LMI census tracts; increasing and focusing marketing on underserved populations to promote this new mortgage product; introducing a new loan product for small businesses; launching a new low-cost deposit product to serve LMI and other underbanked or unbanked customers; and developing partnerships with local governments and community-based organizations to facilitate home mortgage, small business, and community development lending in LMI and majority-minority communities. Cadence represents that Cadence Bank is also committed to opening more branches in LMI and majority-minority census tracts and recently opened a new branch in Houston in an LMI and majority-minority census tract.

CRA Performance of State Bank

State Bank received an overall rating of "Satisfactory" at its most recent CRA Performance Evaluation by the FDIC, as of April 24, 2017 ("State Bank Evaluation").³¹ The bank

³¹ The State Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans reported under the CRA

received a “High satisfactory” rating for the Service Test and received “Low satisfactory” ratings for the Lending Test and the Investment Test.³²

Examiners concluded that State Bank’s lending levels reflected adequate responsiveness to the AAs’ credit needs, and a majority of loans were made in the bank’s AAs. Examiners considered the geographic distribution of loans to reflect adequate penetration throughout the AAs and the distribution of borrowers to reflect generally adequate penetration among retail customers of different income levels and businesses of different sizes. Examiners found that the institution made an adequate level of community development loans and used flexible lending practices to serve the credit needs of its AAs.

Examiners found that State Bank had an adequate level of qualified community development investments and grants and that a few of the investments were in leadership positions, particularly those not routinely provided by private investors. Examiners noted that the bank exhibited good responsiveness to credit and community development needs. Examiners observed that the institution occasionally used innovative and/or complex investments to support community development initiatives.

Examiners found the bank’s retail delivery systems were reasonably accessible to essentially all portions of the bank’s AAs and that the opening and closing of branches generally had not adversely affected the accessibility of its delivery systems. Examiners concluded that services, including business hours, did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and individuals. Examiners also determined that the bank provided a relatively high level of community development services within its AAs.

SBFC’s Efforts since the State Bank Evaluation

Cadence represents that, since the State Bank Evaluation, State Bank has taken actions to improve its CRA performance. Specifically, State Bank originated community development loans, including a number of extensions of credit, to revitalize businesses as well as provide financing for student housing in LMI areas. In addition, Cadence represents that State Bank’s level of qualified investments has continued to grow since the State Bank Evaluation. Cadence further reports that a number of State Bank’s community development investments in the bank’s AAs included qualified affordable low-income housing tax credits to support multifamily housing in LMI areas. Cadence represents that the bank’s officers, directors, and employees have continued to participate in a number of activities and organizations within its AAs that provide support to LMI and minority individuals and promote community development and financial literacy.

Views of the OCC and FDIC

In its review of the proposal, the Board has consulted with the OCC regarding the CRA, consumer compliance, and fair lending record of Cadence Bank. The Board has also considered the results of the most recent consumer compliance examinations of Cadence Bank and State Bank conducted by the OCC and FDIC, respectively, which included reviews of the banks’ compliance management programs and the banks’ compliance with consumer protection laws and regulations. The OCC reviewed and approved the Bank Merger Act application related to the proposal and, in doing so, considered adverse

for the years 2014, 2015, and 2016. The evaluation period for community development loans, the Investment Test, and the Service Test was January 21, 2014, through April 24, 2017. The branch office distribution was as of April 24, 2017.

³² The State Bank Evaluation included a review of the bank’s AAs in Georgia, which included full-scope examinations of the Macon, Atlanta, and Augusta MSAs, as well as limited-scope examinations of the Warner Robins MSA and the Dooley County non-MSA.

comments regarding the Birmingham MSA that were similar to the comment submitted to the Board on the BHC Act application regarding the Birmingham MSA.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Cadence represents that, following consummation of the proposal, existing customers of State Bank and Cadence Bank would benefit from a more extensive network of branches and ATMs across six states, and State Bank's existing customers particularly would benefit from access to an expanded array of products and services, including wealth management, investment, and mobile banking options. In addition, Cadence represents that existing business customers of Cadence Bank would benefit from the Small Business Administration lending programs, asset-based lending activities, and payroll services offered by State Bank, which Cadence Bank would continue after consummation of the proposal.

Cadence represents that, following consummation of the proposal, Cadence Bank would maintain a high level of community development lending, investment, services, and other CRA activities throughout the combined organization's service areas. Cadence represents that the combined bank would continue to expand its mortgage lending to LMI and minority borrowers and communities; its small business lending, including in LMI and minority communities; and its community development, investment, and service activities. Cadence further represents that it is committed to working closely with community leaders, small business owners, members of nonprofit organizations, and residents in its AAs to provide information about the CRA services Cadence Bank offers and to assess the community development needs in the AAs.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; supervisory views of the OCC and FDIC; confidential supervisory information; information provided by Cadence; 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

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."³³

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on

³³ 12 U.S.C. § 1842(c)(7).

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

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

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than \$10 billion in total assets and a pro forma organization of less than \$100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁷ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.³⁸ In reaching its conclusion, the Board has consid-

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

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

³⁶ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁷ Cadence and SBFC both offer a range of retail and commercial banking products and services. Cadence has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

³⁸ A commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any proposal unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the proposal. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities in connection with this application. Under its rules, the Board

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

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

By order of the Board of Governors, effective December 7, 2018.

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

Ann E. Misback
Secretary of the Board

also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all of the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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

Order Issued Under Federal Reserve Act

Comerica Bank
Dallas, Texas

Order Approving the Establishment of Branches
FRB Order No. 2018-24 (November 6, 2018)

Comerica Bank, a state member bank subsidiary of Comerica Incorporated, both of Dallas, Texas, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")¹ and the Board's Regulation H² to establish two branches in Texas.³

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

Comerica Incorporated, with consolidated assets of \$72.2 billion, is the 42nd largest depository organization in the United States, controlling approximately \$57.7 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Comerica Bank operates through 441 offices located in Arizona, California, Florida, Michigan, and Texas, and Comerica Bank's main office is in Dallas, Texas. In Texas, Comerica Bank is the 11th largest depository institution, with 122 offices, controlling approximately \$9.5 billion in deposits, which represent approximately 1.2 percent of the total amount of deposits in that state.⁶

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

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Comerica Bank, the Board has reviewed reports of examination, other super-

¹ 12 U.S.C. § 321.

² 12 CFR Part 208.

³ Comerica Bank proposes to establish one branch at 6829 Hillcrest Avenue, Dallas, Texas ("Dallas branch") and one branch at 2 Riverway Drive, Suite 160, Houston, Texas ("Houston branch"). Comerica Bank represents that the Houston branch is intended to replace a branch that is located 2.8 miles away.

⁴ 12 CFR 262.3(b).

⁵ Total assets are as of June 30, 2018. National asset ranking and deposit data are as of March 31, 2018. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁶ State deposit data are as of June 30, 2017.

⁷ 12 CFR 208.6(b).

⁸ 12 U.S.C. § 2901 *et seq.*

⁹ 12 CFR 208.21(a).

visory information, publicly reported and other financial information, information provided by Comerica Bank, and the public comment received on the proposal. Comerica Bank is well capitalized and would remain so upon consummation of the proposal. The asset quality, earnings, and liquidity of Comerica Bank are consistent with approval, and Comerica Bank appears to have adequate resources to absorb the cost of the proposal. In addition, future earnings prospects are consistent with approval. The Board also has reviewed Comerica Bank's proposed investment in the branches and concludes that the bank's investment is consistent with regulatory limitations on investment in bank premises.¹⁰

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

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

Convenience and Needs Considerations

In considering the effects of a proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, 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 record of the depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹¹ 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 a bank branching proposal.¹²

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

¹⁰ 12 CFR 208.21(a).

¹¹ 12 U.S.C. § 2901(b).

¹² 12 U.S.C. § 2903.

information, information provided by Comerica Bank, and the public comment received on the proposal.

Public Comment on the Proposal

A commenter objected to the proposal, alleging that Comerica Bank has engaged in redlining and discriminates against African Americans in Houston and Dallas, Texas.¹³ Specifically, the commenter alleged that Comerica Bank has denied African American individuals and African American-owned businesses equal access to capital and credit by heavily concentrating its outreach and banking activities in predominantly white neighborhoods and to white individuals and white-owned businesses. The commenter also alleges that Comerica Bank disfavors certain African American neighborhoods in Houston and Dallas with respect to its lending, marketing, community development, and branching activities.

Business of the Applicant and Response to Comment

Through its network of branches, Comerica Bank offers a variety of retail and commercial banking products and services to consumers and businesses, including consumer and commercial products, such as commercial and industrial loans, wealth management services, treasury management services, capital market products, international trade finance, and investment management and advisory services. Comerica Bank represents that it has policies and processes in place to ensure compliance with all anti-discrimination laws and regulations and emphasizes that it has received an Outstanding or Satisfactory CRA rating for many years. In addition, Comerica Bank represents that it has a longstanding commitment to investment in its communities, particularly the Houston area, and has two programs in place to enhance lending to LMI communities and communities of color.

Record of Performance under the CRA

In evaluating the convenience and needs factor and the CRA performance of an institution, the Board generally considers the institution's most recent CRA evaluation, as well as other information and supervisory views from the relevant federal supervisor or supervisors, which in this case is the Federal Reserve Bank of Dallas ("Reserve Bank").¹⁴ In addition, the Board considers information provided by the applicant and by public commenters.

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

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to

¹³ Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. See Interagency Fair Lending Examination Procedures (August 2009), available at <https://www.ffiec.gov/pdf/fairlend.pdf>.

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

¹⁵ 12 U.S.C. § 2906.

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"),¹⁶ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;¹⁷ (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.

CRA Performance of Comerica Bank

Comerica Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of June 22, 2015 ("Comerica Bank Evaluation").¹⁸ Comerica Bank received "High Satisfactory" ratings for the Lending test and the Service test and an "Outstanding" rating for the Investment test.¹⁹

Examiners found that Comerica Bank's overall lending activity was good in all the states in which it operates, including Texas. According to examiners, the geographic distribution of loans throughout the bank's AAs was excellent. Examiners found that the bank had an adequate distribution of loans among borrowers of different income levels and businesses of different sizes. In addition, examiners found that the bank's lending activity reflected good responsiveness to the credit needs of the AAs, and a substantial majority of the loans were made in the bank's AAs. Examiners also noted that the bank made a relatively high level of community development loans during the review period for a variety of purposes, including for financing affordable housing and high-impact community development proj-

¹⁶ 12 U.S.C. § 2801 *et seq.*

¹⁷ 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).

¹⁸ The Comerica Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and small business loans, and home equity lines of credit from January 1, 2012, through December 31, 2014. The evaluation period for community development loans, investments, and services was April 1, 2012, through December 31, 2014.

¹⁹ The Comerica Bank Evaluation included a full-scope review of the bank's AAs within the following areas: the Phoenix-Mesa-Scottsdale, Arizona Metropolitan Statistical Area ("MSA"); the Los Angeles-Anaheim-Long Beach, California MSA; the San Jose-Sunnyvale-Santa Clara, California MSA; the Miami-Fort Lauderdale-West Palm Beach, Florida MSA; the Detroit-Warren-Dearborn, Michigan MSA; the Grand Rapids-Wyoming, Michigan MSA; the Dallas-Fort Worth-Arlington, Texas MSA ("Dallas AA"); and the Houston-The Woodlands-Sugar Land, Texas MSA ("Houston AA"). Limited-scope reviews were conducted in 24 other assessment areas in California, Florida, Michigan, and Texas.

ects, promoting economic development, including job creation, and revitalizing or stabilizing targeted communities in LMI census tracts and empowerment zones.

Examiners rated Comerica Bank's performance in Texas under the Lending test as "High Satisfactory." In both the Dallas and Houston AAs, the two areas of interest to the commenter, examiners determined that Comerica Bank's lending levels reflected good responsiveness to the AAs' credit needs. Examiners found that the bank's geographic distribution of loans reflected excellent penetration throughout Texas, including in both the Houston and Dallas AAs. Examiners also found that the bank's distribution of loans to borrowers of different income levels and to businesses of different revenue sizes was adequate in both the Houston and Dallas AAs. Examiners determined that Comerica Bank made a relatively high level of community development loans in Texas. In the Dallas AA, examiners found Comerica Bank to be a leader in community development lending; however, examiners found that Comerica Bank made a low level of community development loans in the Houston AA.

Examiners found that Comerica Bank had an excellent level of qualified community development investments and grants and was often in a leadership position throughout its AAs, including in Texas. Examiners noted that the bank's investments demonstrated good responsiveness to the most pressing credit and community development needs throughout its AAs. Examiners found that the bank's primary vehicle for qualified community development investments was through Low Income Housing Tax Credit ("LIHTC")²⁰ projects in the states in which it operates. Examiners noted that these LIHTC investments addressed vital needs for affordable housing throughout the bank's AAs and had a material impact on the communities the bank served. Examiners found that, in addition to statewide donations and investments, the Dallas and Houston AAs benefitted from Comerica Bank's LIHTC investments.

Examiners found that Comerica Bank's retail delivery systems were accessible to geographies and individuals of different income levels within its AAs. Examiners noted that Comerica Bank's banking services and business hours did not vary in a way that inconvenienced any portion of the bank's AAs, particularly LMI geographies and individuals. Examiners also noted that in most areas, Comerica Bank had Saturday and extended morning and evening hours and offered no- or low-cost deposit accounts. Examiners found that the bank's record of opening and closing offices in Texas during the review period had not affected the accessibility of its delivery systems, including to LMI geographies or individuals.

In the Houston and Dallas AAs, examiners found Comerica Bank's performance on the Service test to be adequate and excellent, respectively. Examiners noted that the bank's level of community development services was good in Texas. Examiners noted that the bank's employees were involved in organizations and activities that promoted or facilitated affordable housing for LMI individuals; provided community services for LMI individuals, such as financial literacy education; and promoted the economic development and revitalization of LMI areas.

In the Dallas AA, examiners found that Comerica Bank was a leader in providing retail and community development services and that these services reflected excellent responsiveness to the needs of the AA. In the Houston AA, examiners found that Comerica Bank's retail and community development services reflected adequate responsiveness to the credit needs of the AA.

²⁰ See 26 U.S.C. §42.

Comerica Bank's Efforts since the Comerica Bank Evaluation

Comerica Bank represents that since the Comerica Bank Evaluation it has made several enhancements to its CRA program, including by establishing a CRA working group in early 2017. Comerica Bank represents that it restructured its CRA Department in 2018 to utilize a first line of defense/second line of defense strategy and that its systems are being upgraded to improve efficiency and accuracy of reporting. Comerica Bank notes that it has made a significant number of loans to businesses located in LMI census tracts in Dallas and Houston and a significant number of community development loans in the Dallas and Houston AAs. Finally, Comerica Bank represents that it has made a significant number of CRA-qualified investments and CRA-qualified charitable contributions in both the Dallas and Houston AAs.

Additional Supervisory Views of the Reserve Bank

The Board has considered the results of a recent target examination of Comerica Bank's Fair Housing Act fair lending program, which included a redlining review of a number of markets, including the Dallas and Houston AAs. The redlining review included an evaluation of the bank's AA delineation, lending, marketing and outreach efforts, and branching. The Board also has considered Comerica Bank's supervisory record with the Bureau of Consumer Financial Protection.

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. Comerica Bank asserts that the proposed branches would offer expanded hours for customers to handle transactions through video and other new technologies. Excluding safe deposit and night depositary services, Comerica Bank represents that the products and services to be offered at the Houston branch would be substantially the same as those offered at the existing branch that the proposed branch would replace. Comerica Bank asserts that the Dallas branch would provide additional convenience and accessibility to products and services for the surrounding neighborhoods, businesses, and office building complexes, and the greater Dallas community and economy.

Conclusion on Convenience and Needs Considerations

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.²¹ The Board's approval is specifically condi-

²¹ The Board construes the public comment to include a request that the Board hold public hearings on the applications. Under its rules, the Board may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. 12 CFR 262.3(e). The Board has considered the commenter's request in light of all the facts of record. Notice of the Dallas branch application was published in relevant newspapers of general circulation on August 17, 2018, and the comment period ended on September 1, 2018. Notice of the Houston branch application was published in relevant newspapers of general circulation on July 19, 2018, and the comment

tioned on compliance by Comerica Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any commitments made to the Board in connection with 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.

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

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

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

Ann E. Misback
Secretary of the Board

period ended on August 4, 2018. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Order Issued Under International Banking Act

Joint Stock Commercial Bank for Foreign Trade of Vietnam Hanoi, Vietnam

*Order Approving the Establishment of a Representative Office
FRB Order No. 2018-23 (October 26, 2018)*

Joint Stock Commercial Bank for Foreign Trade of Vietnam (“Vietcombank”), Hanoi, Vietnam, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York (the “New York Representative Office”). The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, December 21, 2017). The time for submitting comments has expired, and the Board has considered all comments received.

Vietcombank, with total assets of approximately \$43.6 billion, is the fourth largest bank in Vietnam by asset size.² Vietcombank provides retail and commercial banking services to individuals, corporations, and financial institutions, including international trade finance, foreign exchange and fixed-income trading, lending, project finance, money transfer, and correspondent banking services. Vietcombank operates four domestic subsidiaries that engage in securities activities, financial services, office leasing, and remittance activities. Foreign operations of the bank include a representative office in Singapore, a finance company subsidiary in Hong Kong, and a U.S. money transmitter subsidiary, VCB Money Inc., Garden Grove, California (“VCB Money”).³

Vietcombank’s largest shareholder is the government of Vietnam through the State Bank of Vietnam (“SBV”), the central bank of Vietnam, which currently owns approximately 77 percent of the bank’s voting shares. The second largest shareholder, with 15 percent of Vietcombank’s voting shares, is Mizuho Bank, Ltd., Tokyo, Japan. The remaining shares of Vietcombank are widely held.

The New York Representative Office would act as a liaison with U.S. clients and prospective clients of Vietcombank. The New York Representative Office also would engage in other representational activities, such as providing analysis of the banking sector and financial services market, acting as a liaison with correspondent banks in the United States, and participating in business symposiums and conferences.⁴

¹ 12 U.S.C. §3107(a).

² Asset data is as of June 30, 2018. Ranking data is as of December 31, 2016.

³ VCB Money is a subsidiary of Vietcombank and was first licensed as a money transmitter in California in 2011. VCB Money provides outbound money transmission services to U.S. residents seeking to send money to Vietnam. VCB Money currently is licensed as a money transmitter in seventeen additional states, and provides services through its own offices and a network of authorized agents in the U.S.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of a foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank’s head office and customers in the United States, performing preliminary and servicing steps in connection with lending and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

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

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed office, taking into account the nature of such activities and the operating record of the applicant bank.⁷ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, Vietcombank has provided certain commitments that limit the activities of the New York Representative Office. In particular, Vietcombank has committed that the New York Representative Office would not solicit deposits, make credit decisions or any other decisions that bind Vietcombank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The New York Representative Office also would not share office space or premises with VCB Money. The New York Representative Office would engage only in the activities described in its application to the Board.

As noted above, Vietcombank engages directly in the business of banking outside the United States. Vietcombank has provided the Board with the information necessary to assess the application, through submissions that address the relevant issues. With respect to supervision by home country authorities, the Board has considered that Vietcombank is supervised by the SBV.

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

⁶ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include the following: whether the bank's home country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; whether the bank and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. The Board may also, in the case of a foreign bank that presents a risk to the stability of the United States, take into account, to the extent appropriate, whether the home country of the foreign bank has adopted, or is making demonstrable progress towards adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁷ See 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that "[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers than do branches or agencies." 66 *Fed. Reg.* 54346, 54365 (October 26, 2001).

The SBV serves as the chief supervisory authority over the banking and financial sector in Vietnam, conducts monetary policy, and issues national currency. The SBV applies a risk-based supervisory approach with a focus on credit, liquidity, market, and operational risks. The SBV supervises banking organizations through a combination of off-site monitoring and on-site examinations that focus on compliance with applicable laws and regulations, including anti-money-laundering rules, corporate governance, audit, internal controls, risk management, and financial condition, including asset quality, capital, liquidity, and profitability. The SBV conducts off-site monitoring of Vietcombank through the review of a set of periodic reports on the bank's consolidated operations, including its branches, subsidiaries, and affiliates, both domestic and foreign. Vietcombank is required to provide annual audited financial statements to the SBV. Vietnam is expected to fully transition to International Financial Reporting Standards in the next few years.

Vietnam was the subject of a 2014 Financial Sector Assessment Program ("FSAP") review that revealed weaknesses in bank supervision in Vietnam, including low quality financial data, low compliance with Basel Core Principles, infrequent SBV on-site inspections, and conflicting roles of the SBV. Vietcombank has indicated that the SBV and the Government of Vietnam have taken significant steps to address the deficiencies revealed in the FSAP report. These include the issuance of new regulations to improve the quality of financial data, as well as participation in a joint Vietnam-Canada initiative to transition Vietnam's regulatory and supervisory regime to international standards. To address its independence, the SBV issued a new regulation in February 2017 on the functions, powers, duties, and structure of the SBV.

Based on all the facts of record, including the commitments provided by Vietcombank limiting the activities of the New York Representative Office, it has been determined that Vietcombank is subject to a supervisory framework that is consistent with the current and proposed activities of the New York Representative Office, taking into account the nature of such activities.

The Board also has considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (2) the financial and managerial resources of the bank; (3) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board; and (4) whether the bank's home country supervisor has consented to the establishment of the office.⁸

Vietnam is a member of the Asia/Pacific Group ("APG") on money laundering and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Vietnam has created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offence in Vietnam, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering. The SBV enforces these requirements with respect to Vietnamese banks, including Vietcombank. Vietcombank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for anti-money-laundering compliance.

⁸ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

Vietcombank appears to have the experience and capacity to support the New York Representative Office. In addition, Vietcombank has established controls and procedures for the New York Representative Office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Vietcombank's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of Vietcombank's application to establish the New York Representative Office.

Vietcombank has committed to make available to the Board such information on the operations of Vietcombank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended,⁹ and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Vietcombank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the SBV may share information on Vietcombank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Vietcombank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the SBV has no objection to the establishment of the New York Representative Office.

The Board has also considered whether Vietcombank's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Vietcombank in its home country; the scope of Vietcombank'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 Vietcombank in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record and subject to commitments made by Vietcombank, Vietcombank's application to establish the New York Representative Office is hereby approved by the Director of the Division of Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁰ Should any restrictions on access to information on the operations or activities of Vietcombank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Vietcombank or its affiliates with applicable federal statutes, the Board may require termination of any of Vietcombank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Vietcombank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

⁹ 12 U.S.C. § 1841 *et seq.*

¹⁰ 12 CFR 265.7(d)(12).

¹¹ The Board's authority to approve the establishment of the New York Representative Office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the New York Representative Office in accordance with any terms or conditions that they may impose.

By order, approved pursuant to authority delegated by the Board, effective
October 26, 2018.

Ann E. Misback
Secretary of the Board

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

Synovus Financial Corp.
Columbus, Georgia

Synovus Bank
Columbus, Georgia

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2018-25 (December 7, 2018)

Synovus Financial Corp. (“Synovus Financial”), Columbus, Georgia, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire and merge with FCB Financial Holdings, Inc. (“FCB Financial”), and thereby indirectly acquire FCB Financial’s subsidiary bank, Florida Community Bank, N.A. (“Florida Community Bank”), both of Weston, Florida.

In addition, Synovus Financial’s subsidiary state member bank, Synovus Bank, Columbus, Georgia, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with Florida Community Bank, with Synovus Bank as the surviving entity.³ Synovus 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 Florida Community Bank.⁴

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 *Federal Register* 44271 (August 30, 2018)).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 of Synovus Bank and Florida Community Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation.

Synovus Financial, with consolidated assets of approximately \$32.1 billion, is the 64th largest insured depository organization in the United States. Synovus Financial controls approximately \$26.4 billion in consolidated deposits, which represent 0.2 percent of the total amount of deposits of insured depository institutions in the United States.⁶ Synovus Financial controls Synovus Bank, which operates in Alabama, Florida, Georgia, South Carolina, and Tennessee. Synovus Financial is the 27th largest insured depository organization in Florida, controlling deposits of approximately \$3.1 billion, which represent 0.5 percent of the total deposits of insured depository institutions in that state.⁷

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

⁶ Nationwide asset data are as of September 30, 2018, and deposit data are as of June 30, 2018, unless otherwise noted.

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

FCB Financial, with consolidated assets of approximately \$12.4 billion, is the 122nd largest insured depository organization in the United States. FCB Financial controls approximately \$9.9 billion in deposits, which represent less than 0.1 percent of the total amount of deposits of insured depository institutions in the United States. FCB Financial controls Florida Community Bank, which operates only in Florida. FCB Financial is the 15th largest insured depository organization in Florida, controlling deposits of approximately \$9.9 billion, which represent 1.7 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Synovus Financial would become the 51st largest insured depository organization in the United States, with consolidated assets of approximately \$45.5 billion, which represent 0.2 percent of the total assets of insured depository organizations in the United States. Synovus Financial would control total deposits of approximately \$36.3 billion, which represent 0.3 percent of the total amount of deposits of insured depository institutions in the United States. In Florida, Synovus Financial would become the 12th largest insured depository organization, controlling deposits of approximately \$13.0 billion, which represent approximately 2.2 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.⁸ Section 44 of the Federal Deposit Insurance Act (“FDI Act”) generally provides that, if certain conditions are met, the Board may approve a merger transaction under the Bank Merger Act between insured banks with different home states without regard to whether the transaction is prohibited under state law.⁹ The Board may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹⁰ In addition, under section 3(d) of the BHC Act, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.¹¹

For purposes of the BHC Act, the home state of Synovus Financial is Georgia, and Florida Community Bank is located only in Florida.¹² For purposes of section 44 of the FDI Act, the home state of Synovus Bank is Georgia, and the home state of Florida

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1831u(a)(1).

¹⁰ 12 U.S.C. §§ 1831u(a)(5) and 1842(d)(1)(B).

¹¹ 12 U.S.C. § 1842(d)(2)(A) and (B). Similar prohibitions apply to action by the Board on interstate bank merger applications under section 44 of the FDI Act. *See* 12 U.S.C. § 1831u(b)(2). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

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

Community Bank is Florida. Synovus Financial and Synovus Bank are well capitalized and well managed under applicable law, and Synovus Bank has a “Satisfactory” rating under the Community Reinvestment Act of 1977 (“CRA”).¹³ There are no statutory minimum age requirements under the laws of Florida, and Florida Community Bank has been in existence for more than five years.¹⁴

On consummation of the proposed transaction, Synovus Financial would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Florida does not impose a limit on the total amount of in-state deposits that a single banking organization may control. Florida is the only state in which Synovus Financial and FCB Financial have overlapping operations, and Synovus Financial would control less than 30 percent of total deposits of banking organizations in Florida as a result of the transaction. The Board has considered all other requirements of section 3(d) of the BHC Act and section 44 of the FDI Act, including Synovus Bank’s record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act and section 44 of the FDI Act.

Competitive Considerations

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

Synovus Bank and Florida Community Bank compete directly in the Fort Myers Area banking market (“Fort Myers market”), the Naples Area banking market (“Naples market”), the Orlando Area banking market (“Orlando market”), the Sarasota Area banking market (“Sarasota market”), and the Tampa Bay Area banking market (“Tampa Bay market”), all of which are located in Florida.¹⁷ The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the number of competitors that would remain in each market; the relative share of total deposits in insured depository institutions in each market (“market deposits”) that Synovus Financial would control;¹⁸ the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under

¹³ 12 U.S.C. § 2901 *et seq.*

¹⁴ See Fla. Stat. § 658.2953.

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

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

¹⁷ The Fort Myers market is defined as Collier and Lee counties, Florida. The Naples market is defined as Collier County (excluding the town of Immokalee), Florida. The Orlando market is defined as Orange, Osceola, and Seminole counties, the western half of Volusia County, and the towns of Clermont and Groveland in Lake County, Florida. The Sarasota market is defined as Manatee County, Sarasota County (not including the portion that is both east of the Myakka River and south of Interstate 75, which includes the town of North Port), the peninsular portion of Charlotte County (the portion west of the Myakka River that includes the towns of Englewood, Englewood Beach, New Point Comfort, Grove City, Cape Haze, Rotonda, Rotonda West, and Placida), and Gasparilla Island, including the town of Boca Grande, in Lee County, Florida. The Tampa Bay market is defined as Hernando, Hillsborough, Pinellas, and Pasco counties, Florida.

¹⁸ State deposit and market share data are as of June 30, 2018, and, unless otherwise indicated, are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City*

the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁹ and other characteristics of each market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Fort Myers, Naples, Orlando, Sarasota, and Tampa Bay markets. On consummation of the proposal, the Orlando and Tampa Bay markets would remain moderately concentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI in the Orlando market would be small, and 44 other competitors would remain in the market.²⁰ The change in the HHI in the Tampa Bay market would also be small, and 54 other competitors would remain in the market.²¹ The Fort Myers, Naples, and Sarasota markets would each remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines, and numerous competitors would remain in each market.²²

Corporation, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

²⁰ Synovus Financial operates the 41st largest depository institution in the Orlando market, controlling approximately \$16.5 million in deposits, which represent less than 0.1 percent of market deposits. FCB Financial operates the 11th largest depository institution in the same market, controlling deposits of approximately \$889.3 million, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 11th largest depository organization in the market, controlling deposits of approximately \$905.8 million, which represent approximately 1.8 percent of market deposits. The HHI for the Orlando market would increase by 1 point to 1281.

²¹ Synovus Financial operates the 16th largest depository institution in the Tampa Bay market, controlling approximately \$768.7 million in deposits, which represent approximately 0.9 percent of market deposits. FCB Financial operates the 20th largest depository institution in the same market, controlling deposits of approximately \$612.5 million, which represent approximately 0.7 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 11th largest depository organization in the market, controlling deposits of approximately \$1.4 billion, which represent approximately 1.6 percent of market deposits. The HHI for the Tampa Bay market would increase by 1 point to 1193.

²² Synovus Financial operates the 30th largest depository institution in the Fort Myers market, controlling approximately \$30.6 million in deposits, which represent approximately 0.2 percent of market deposits. FCB Financial operates the 8th largest depository institution in the same market, controlling deposits of approximately \$612.6 million, which represent approximately 4.0 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 8th largest depository organization in the market, controlling deposits of approximately \$643.2 million, which represent approximately 4.2 percent of market deposits. The HHI for the Fort Myers market would increase by 2 points to 902, and 31 other banking organizations would remain in the market.

Synovus Financial operates the 29th largest depository institution in the Naples market, controlling approximately \$56.6 million in deposits, which represent approximately 0.3 percent of market deposits. FCB Financial operates the 8th largest depository institution in the same market, controlling deposits of approximately \$774.9 million, which represent approximately 4.5 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 8th largest depository organization in the market, controlling deposits of approximately \$831.5 million, which represent approximately 4.9 percent of market deposits. The HHI for the Naples market would increase by 3 points to 874, and 32 other banking organizations would remain in the market.

Synovus Financial operates the 19th largest depository institution in the Sarasota market, controlling approximately \$270.0 million in deposits, which represent approximately 1.3 percent of market deposits. FCB Financial operates the 9th largest depository institution in the same market, controlling deposits of approximately \$554.0 million, which represent approximately 2.7 percent of market deposits. On consummation of the proposed transaction, Synovus Financial would become the 7th largest depository organization in the market, controlling deposits of approximately \$824.0 million, which represent approximately 3.9 percent of market deposits. The HHI for the Sarasota market would increase by 7 points to 927, and 34 other banking organizations would remain in the market.

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

Based on 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 Fort Myers, Naples, Orlando, Sarasota, or Tampa Bay markets, or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²³ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

Synovus Financial and FCB Financial are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.²⁴ The asset quality, earnings, and liquidity of both Synovus Bank and Florida Community Bank are consistent with approval, and Synovus Financial appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

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

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

²⁴ To effect the holding company merger, a wholly owned subsidiary of Synovus Financial would merge with FCB Financial, with FCB Financial as the surviving entity. Immediately thereafter, FCB Financial would merge with Synovus Financial, with Synovus Financial as the surviving entity. Florida Community Bank would then merge with and into Synovus Bank, with Synovus Bank as the surviving entity.

consumer protection, and anti-money-laundering laws; and the public comments on the proposal.

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

The Board also has considered Synovus Financial's plans for implementing the proposal. Synovus Financial has conducted comprehensive due diligence and is devoting significant financial and other resources to address the post-acquisition integration process for this proposal. Synovus Financial would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Synovus Financial's management has the experience and resources to operate the combined organization in a safe and sound manner.²⁵

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁶ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA.²⁷ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²⁸ 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.²⁹

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

²⁵ Following consummation of the proposed transaction, Florida Community Bank's chief executive officer would join Synovus Financial's management as executive vice president.

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

²⁷ 12 U.S.C. § 2901 *et seq.*

²⁸ 12 U.S.C. § 2901(b).

²⁹ 12 U.S.C. § 2903.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Synovus Bank and Florida Community Bank; the fair lending and compliance records of both banks; confidential supervisory information; information provided by and consultations with relevant supervisors; information provided by Synovus Financial; and the public comments on the proposal.

Public Comments on the Proposal

The Board received comments from two commenters on the proposal. One commenter requested that Synovus Bank provide a community benefits plan to address the commenter's concerns with Synovus Bank's lending and CRA performance, as well as to detail how the transaction would benefit the underserved throughout the bank's footprint.³⁰ The commenter asserted that a community benefits plan was particularly warranted in light of the fact that Synovus Bank received "Low Satisfactory" ratings on each of the Lending, Investment, and Service tests at its most recent CRA performance evaluation, whereas Florida Community Bank received "High Satisfactory" ratings on each of the three performance tests at its last CRA performance evaluation. The commenter expressed concerns with Synovus Bank's home mortgage lending to LMI and minority individuals and in minority areas of certain markets based on data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA");³¹ small business lending in certain markets; branch distribution in LMI and minority areas of particular markets; and community development activity in certain markets.

A second commenter objected to the proposal, alleging disparities in denial rates and home mortgage originations to African Americans and/or Hispanics, as compared to whites, in certain markets. The commenter also noted a complaint filed with the Bureau of Consumer Financial Protection ("Bureau") against Synovus Bank relating to collecting on a debt allegedly not owed and a customer review alleging poor customer service by a Synovus Bank branch related to a check hold. Finally, the commenter asserted that the proposal would not produce a public benefit.

Businesses of the Involved Institutions and Response to the Public Comments

Through its network of branches in Alabama, Florida, Georgia, South Carolina, and Tennessee, Synovus Bank offers a variety of products and services, including retail, mortgage, commercial banking, trust, and investment services to retail, business, and institutional clients.

Through its network of branches in Florida, Florida Community Bank offers a full range of traditional banking products and services to individuals, small and medium-size businesses, and other local entities, and targets commercial customers engaged in a wide variety of industries.

³⁰ While the commenter did not explicitly request that a community benefits plan involve an agreement between the group and Synovus Bank, the commenter indicated that it would look forward to meeting with Synovus Bank to discuss development of a community benefits plan. The Board consistently has found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any private party. *See, e.g., HarborOne Mutual Bancshares and HarborOne Bancorp, Inc.*, FRB Order No. 2018-18 at 10 n. 26 (September 12, 2018); *TriCo Bancshares*, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); *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.

³¹ 12 U.S.C. § 2801 *et seq.*

In response to the assertion that Synovus Bank should develop a community benefits plan to address perceived weaknesses in the bank's CRA performance and in other respects, Synovus Financial notes that providing a community benefits plan is not a legal requirement and that Synovus Bank at its most recent CRA performance evaluation received an overall "Satisfactory" rating, as well as a rating of "Satisfactory" for each of its state and multi-state assessments. Synovus Financial cites this performance evaluation as evidence that Synovus Bank had adequate penetration in LMI geographies with respect to HMDA-reportable lending, excellent penetration in LMI geographies with respect to small business lending, and adequate distribution of both HMDA-reportable and small business loans among borrowers of different income levels and businesses of different sizes. Synovus Financial notes that there have been recent year-over-year increases in the proportion of the organization's mortgage loan applications from minority census tracts, as well as in the proportion of its applications from and originations to African Americans in key markets.

With respect to Synovus Bank's community development lending, Synovus Financial asserts that the bank's level of community development lending was found to be adequate in its last CRA performance evaluation and notes that Synovus Bank has continued to expand its affordable credit programs and increase its community investment portfolio. Synovus Financial also notes that Synovus Bank routinely evaluates its distribution of branches and is developing ways to increase the number of alternative systems for delivering retail banking services to customers.

Synovus Financial also notes that Synovus Bank is committed to identifying and continuously monitoring gaps in its CRA performance and fair lending performance and continues to implement a plan to enhance branch awareness, improve community outreach, and increase distribution of loan applications in underserved markets.

In response to the allegations regarding Synovus Bank's home mortgage lending record, Synovus Financial asserts that the bank's record reflects decisions based upon underwriting criteria applied without regard to the race of the borrower. Synovus Financial represents it is committed to compliance with fair lending laws and regulations and has developed strategies to increase lending in high minority census tracts. With respect to the complaint and customer review cited, Synovus Financial asserts that it maintains a robust customer complaint system and that Synovus Financial and its third-party vendors took appropriate measures to investigate the matters and respond appropriately, including by explaining the applicable bank policies to the customer.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case are the Federal Reserve Bank of Atlanta ("Reserve Bank") and the Office of the Comptroller of the Currency ("OCC").³² In addition, the Board considers information provided by the applicant and by public commenters.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³³ An institution's most recent CRA performance evaluation is a particularly important consideration in the appli-

³² See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

³³ 12 U.S.C. § 2906.

cations process because it represents a detailed, on-site evaluation by the institution's primary federal financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Synovus Bank and Florida Community Bank, in helping to meet the credit needs of the communities they serve. The lending test specifically evaluates an institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of the institution's lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;³⁴ (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.³⁵ Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.³⁶

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.³⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Synovus Bank

Synovus Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of November 6, 2017 ("Synovus Bank Evaluation").³⁸ The bank received "Low Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.³⁹

³⁴ 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).

³⁵ *See* 12 CFR 228.22(b).

³⁶ *See* 12 CFR 228.21 *et seq.*

³⁷ Other information relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁸ The Synovus Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage loans of Synovus Bank and its wholly owned mortgage affiliate, Synovus Mort-

Examiners found that the bank's overall geographic distribution of lending in LMI geographies was adequate for HMDA-reportable lending and excellent for small business lending. Examiners concluded that the bank's overall distribution of HMDA-reportable lending was adequate among borrowers of different income levels and that its overall distribution of small business lending among businesses of different sizes was adequate. Examiners noted that Synovus Bank made an adequate level of community development loans.

Examiners found that Synovus Bank made an adequate level of qualified community development investments in response to community development needs of its AAs. Examiners noted that the bank's investments included projects to support affordable housing and investments to promote economic development. Examiners noted that the bank's contributions supported organizations engaged in community services for LMI individuals or communities. Examiners also noted that the bank contributed to other community development needs, such as to provide affordable housing support to nonprofits developing affordable housing and offering homebuyer education.

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

Synovus Bank's Efforts since the Synovus Bank Evaluation

Synovus Financial represents that, since the Synovus Bank Evaluation, Synovus Bank has continued to develop its CRA strategy and plan. Specifically, Synovus Financial states that Synovus Bank has developed CRA performance targets for the Lending, Investment, and Service tests in each of the bank's AAs. Synovus Financial cites numerous examples of CRA activities undertaken by Synovus Bank since the Synovus Bank Evaluation, including community development loans, investments, and services. Synovus Financial also represents that Synovus Bank continues to maintain strong partnerships with community development organizations and has worked to make its retail banking services more accessible.

CRA Performance of Florida Community Bank

Florida Community Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of March 6, 2017 ("Florida Community

gage Corporation, as well as small business loans of Synovus Bank from January 1, 2014, through December 31, 2016. In addition, examiners considered the community development loans originated by Synovus Bank between January 1, 2014, and June 30, 2017, as well as all qualified investments that were funded prior to but still outstanding as of December 31, 2016, or purchased between January 1, 2014, and June 30, 2017, and all community development services performed during that same period of time.

³⁹ The Synovus Bank Evaluation included a full-scope review of at least one AA in each state where the bank has branches. Each of the bank's 49 AAs was reviewed for lending, investment, and service performance using either full-scope or limited-scope examination procedures.

Bank Evaluation”).⁴⁰ The bank received “High Satisfactory” ratings for the Lending Test, the Investment Test, and the Service Test.⁴¹

Examiners found that Florida Community Bank’s lending activity reflected good responsiveness to credit needs in the bank’s AAs. Examiners noted that the bank’s lending activity reflected adequate responsiveness to AA credit needs for mortgages and small business loans and considered the level of community development lending to be excellent. Examiners found that the geographic distribution of loans and the distribution of loans by income level of the borrower were adequate. Examiners also noted that Florida Community Bank used innovative and flexible lending practices to address credit needs within its AAs.

Examiners found that Florida Community Bank made a good level of qualified investments and grants/donations and that a few of the investments were innovative or complex and not routinely provided by private investors.

Examiners found Florida Community Bank’s retail delivery systems to be reasonably accessible to geographies and individuals of different income levels in the bank’s AAs. Examiners determined that the level of community development services provided by the bank was excellent. Examiners stated that the services provided were responsive to AA needs, such as financial literacy, community service, training, and affordable housing.

Additional Supervisory Views

In its review of the proposal, the Board has consulted with the Reserve Bank regarding the CRA and consumer compliance, including fair lending, records of Synovus Bank and considered the results of the OCC’s most recent CRA and consumer compliance examinations of Florida Community Bank. The Board also has considered Synovus Bank’s supervisory record with the Bureau.

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

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Synovus Financial represents that, following consummation of the proposal, customers of the combined organization would have access to a larger branch and ATM network and a greater variety of banking products and services than either Synovus Financial or FCB Financial could provide alone. Synovus Financial further represents that the services currently offered by the two banking organi-

⁴⁰ The Florida Community Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed residential mortgage and small business loans from January 1, 2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from October 15, 2013, through December 31, 2016.

⁴¹ The Florida Community Bank Evaluation included full-scope evaluations of the Ft. Lauderdale-Pompano Beach-Deerfield Beach Metropolitan District (“MD”) AA; Miami-Miami Beach-Kendall MD AA; West Palm Beach-Boca Raton-Boynton MD AA; and Naples-Marco Island Metropolitan Statistical Area (“MSA”) AA. Examiners conducted limited-scope evaluations of the Cape Coral-Ft. Myers MSA AA; Deltona-Daytona Beach-Ormond Beach MSA AA; North Port-Bradenton-Sarasota MSA AA; Orlando-Kissimmee-Sanford MSA AA; Palm Bay-Melbourne-Titusville MSA AA; Port St. Lucie MSA AA; Punta Gorda MSA AA; Sebastian-Vero Beach MSA AA; Tampa-St. Petersburg-Clearwater MSA AA; and Hendry County Non-MSA AA.

zations are complementary and that customers would be well served by the combined organization. Synovus Financial also represents that the resulting organization would remain committed to the communities it serves, including underbanked communities. Synovus Financial intends to continue Florida Community Bank’s existing CRA programs in the areas Florida Community Bank currently operates and to retain all CRA staff within the combined organization. Synovus Financial asserts that the combined organization would synergize the CRA strengths of both banks and enhance the current CRA records of each bank.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA; the institutions’ records of compliance with consumer protection laws; supervisory views of the Reserve Bank, the OCC, and the Bureau; confidential supervisory information; information provided by Synovus Financial; 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 its review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider a proposal’s “risk to the stability of the United States banking or financial system.”⁴²

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.⁴³ 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.⁴⁴

The Board’s experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.⁴⁵

⁴² 12 U.S.C. §§ 1842(c)(7) and 1828(c)(5).

⁴³ Many of the metrics considered by the Board measure an institution’s activities relative to the United States financial system.

⁴⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

⁴⁵ See *People’s United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is greater than \$10 billion in assets but a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.⁴⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

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

Establishment of Branches

Synovus Bank has applied under section 9 of the FRA to establish branches at the current locations of Florida Community Bank.⁴⁷ The Board has assessed the factors it is required to consider when reviewing an application under that section.⁴⁸ Specifically, the Board has considered Synovus 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.⁴⁹ For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.⁵⁰ In reaching its conclusion, the Board has

⁴⁶ Synovus Bank and Florida Community Bank offer a broad range of retail and commercial banking products and services. Synovus Financial has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors for them would remain.

⁴⁷ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is located, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2) & (c). In addition, under section 44 of the FDI Act, a state member bank resulting from an interstate merger transaction may retain and operate, as a main office or a branch, any office that any bank involved in the merger was operating as a main office or branch immediately before the merger transaction. 12 U.S.C. § 1831u(d). Upon consummation, all of Synovus Bank's branches would be permissible under applicable state law. See Fla. Stat. § 658.2953.

⁴⁸ 12 U.S.C. § 322; 12 CFR 208.6.

⁴⁹ Upon consummation of the proposed transaction, Synovus Bank's investment in bank premises would remain within legal requirements, under 12 CFR 208.21.

⁵⁰ A 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 proposal unless the appropriate supervisory authorities for the acquiring bank or the bank to be acquired make a timely written recommendation of disapproval of the application. 12 U.S.C. § 1842(b); 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also, in its discretion, may hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does

considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Synovus Financial and Synovus Bank with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 7, 2018.

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

Ann E. Misback
Secretary of the Board

Appendix A

Branches to Be Established by Synovus Bank

1. 1701 North Atlantic Avenue, Cocoa Beach, Florida 32931
2. 2105 North Courtenay Parkway, Merritt Island, Florida 32953
3. 5599 South University Drive, Davie, Florida 33328
4. 632 South Federal Highway, Fort Lauderdale, Florida 33301
5. 1709 East Hallandale Beach Boulevard, Hallandale, Florida 33009
6. 5375 West Atlantic Boulevard, Margate, Florida 33063
7. 1142 Weston Road, Weston, Florida 33326
8. 2500 Weston Road, Suite 300, Weston, Florida 33331
9. 3100 South McCall Road, Englewood, Florida 34224
10. 1255 Tamiami Trail, Port Charlotte, Florida 33953
11. 125 Nesbit Street, Punta Gorda, Florida 33950
12. 1400 North 15th Street, Immokalee, Florida 34142
13. 2400 Tamiami Trail North, Suite 100, Naples, Florida 34103
14. 2325 Vanderbilt Beach Road, Naples, Florida 34109
15. 155 North Bridge Street, Labelle, Florida 33935
16. 1000 South Broad Street, Brooksville, Florida 34601
17. 130 South Westshore Boulevard, Tampa, Florida 33609
18. 13128 North Dale Mabry Highway, Tampa, Florida 33618
19. 12105 West Linebaugh Avenue, Tampa, Florida 33626
20. 4000 20th Street, Vero Beach, Florida 32960
21. 3360 Bonita Beach Road, Bonita Springs, Florida 34133
22. 205 Del Prado Boulevard South, Cape Coral, Florida 33990
23. 7900 Summerlin Lake Drive, Fort Myers, Florida 33907
24. 1261 Homestead Road, Lehigh Acres, Florida 33936
25. 715 Colorado Avenue, Stuart, Florida 34994
26. 2020 Ponce De Leon Boulevard, Suite 102, Coral Gables, Florida 33134

not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

27. 9128 Northwest 25th Street, Doral, Florida 33172
28. 8404 Northwest 103rd Street, Suites B and C, Hialeah Gardens, Florida 33016
29. 2 South Biscayne Boulevard, Suite 110, Miami, Florida 33131
30. 5900 Bird Road, Miami, Florida 33155
31. 13298 Biscayne Boulevard, North Miami, Florida 33181
32. 1802 North East Miami Gardens Drive, North Miami Beach, Florida 33179
33. 11315 South Dixie Highway, Pinecrest, Florida 33156
34. 130 South Park Avenue, Apopka, Florida 32703
35. 8910 Conroy-Windermer Road, Orlando, Florida 32835
36. 369 North New York Avenue, Winter Park, Florida 32789
37. 11431 West Palmetto Park Road, Boca Raton, Florida 33428
38. 140 North Federal Highway, Boca Raton, Florida 33432
39. 7593 Boynton Beach Boulevard, #120, Boynton Beach, Florida 33437
40. 4850 West Atlantic Avenue, Delray Beach, Florida 33445
41. 14235 US Highway One, Juno Beach, Florida 33408
42. 1314 Greenview Shores Boulevard, Wellington, Florida 33414
43. 1555 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401
44. 8444 South Tamiami Trail, Sarasota, Florida 34231
45. 1790 Main Street, Sarasota, Florida 34236
46. 2160 West State Road 434, Longwood, Florida 32779
47. 2500 Virginia Avenue, Fort Pierce, Florida 34981
48. 1301 Southeast Port Saint Lucie Boulevard, Port Saint Lucie, Florida 34952
49. 1120 West Granada Boulevard, Ormond Beach, Florida 32174
50. 4777 Clyde Morris Boulevard, Port Orange, Florida 32129

Order Issued Under Bank Merger Act and Federal Reserve Act

Security Trust & Savings Bank
Storm Lake, Iowa

Order Approving the Acquisition of Assets and Assumption of Liabilities and the Establishment of a Branch
FRB Order No. 2018-21 (October 12, 2018)

Security Trust & Savings Bank (“Security Bank”), a state member bank subsidiary of Storm Lake Security Bancorporation (“Security Bancorp”), both of Storm Lake, Iowa, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)¹ to purchase substantially all of the assets and assume substantially all of the liabilities of First National Bank of Rembrandt (“FNB Bank”), Rembrandt, Iowa. Security Bank also has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)² to establish a branch office at the location of FNB Bank’s main office.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.⁴ The time for submitting comments has expired, and no comments were received. The Board has considered the proposal in light of the factors set forth in the Bank Merger Act and the FRA. As required by the Bank Merger Act, a report on the competitive effects of Security Bank’s acquisition of the assets and assumption of the liabilities of FNB Bank was requested from the United States Attorney General, and a copy of the request has been provided to the Office of the Comptroller of the Currency (“OCC”).

Security Bancorp, with consolidated assets of approximately \$201.6 million, is the 2,978th largest insured depository organization in the United States. Security Bancorp controls approximately \$181.3 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ Security Bancorp controls Security Bank, which operates only in Iowa. Security Bancorp is the 102nd largest insured depository organization in Iowa, controlling deposits of approximately \$181.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

FNB Bank, with assets of approximately \$54.5 million, is the 5,038th largest insured depository organization in the United States. FNB Bank controls approximately \$43.4 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FNB Bank operates only in Iowa. FNB Bank is the 242nd largest insured depository organization in Iowa, controlling deposits of approximately \$43.7 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

On consummation of the proposal, Security Bancorp would become the 2,540th largest insured depository organization in the United States, with consolidated assets of approxi-

¹ 12 U.S.C. § 1828(c).

² 12 U.S.C. § 321.

³ The branch would be located at 101 East Main Street, Rembrandt, Iowa.

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

⁵ Nationwide asset and deposit data are as of March 31, 2018, unless otherwise noted.

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

mately \$256.1 million, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Security Bancorp would control total deposits of approximately \$224.7 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Iowa, Security Bancorp would become the 73rd largest insured depository organization, controlling deposits of approximately \$224.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

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

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

The structural effects that consummation of the proposal would have in the Buena Vista market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data.

Using initial screening data, Security Bank is the largest depository organization in the Buena Vista market, controlling approximately \$181 million in deposits, which represent approximately 22.5 percent of market deposits. FNB Bank is the seventh largest depository

⁷ 12 U.S.C. § 1828(c)(5).

⁸ 12 U.S.C. § 1828(c)(5)(B).

⁹ The Buena Vista market is defined as Buena Vista County, plus Eureka, Eden, Delaware, Douglas, and Cook townships in Sac County, all in Iowa.

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

¹¹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

organization in the Buena Vista market, controlling approximately \$43.7 million in deposits, which represent approximately 5.44 percent of market deposits. On consummation, Security Bank would remain the largest depository organization in the Buena Vista market, controlling approximately \$224.8 million in market deposits, which would represent approximately 28 percent of market deposits. The HHI in this market would increase by 261 points, from 1604 to 1865.

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 Buena Vista market.¹² Several factors indicate that the increase in concentration in the Buena Vista market, as measured by the above HHI, overstates the potential competitive effects of the proposal in the market.

One thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Buena Vista market,¹³ as measured in terms of the ratios of those types of loans to total loans and assets.¹⁴ The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations. In addition, the Board has considered the competitive influence of one credit union in the Buena Vista market that offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the market.¹⁵ The Board finds that these circumstances warrant including the deposits of this credit union at a 50 percent weight in its calculations to estimate market influence. This weighting takes into account the limited lending done by the credit union to small businesses relative to commercial banks' lending levels.

Adjusting to reflect competition from the thrift and the credit union, Security Bank's market share would increase to 27.6 percent, and the market concentration level as measured by the HHI would increase by 240 points, from a level of 1498 to 1738 as a result of the transaction. The market concentration, as well as the resulting market share, would be within the DOJ Bank Merger Guidelines. Including the thrift and the credit union, nine

¹² The number and strength of the 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).

¹³ The standard treatment of thrifts in the competitive analysis is to give their deposits 50-percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, the Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. See, e.g., *Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. See, e.g., *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc.*, *supra*.

¹⁴ This thrift institution has a ratio of commercial and industrial loans to assets of 6.5 percent. This is comparable to the ratio of some thrift institutions that the Board has previously found to be full competitors of commercial banks. *Id.*

¹⁵ The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *Central Banccompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Ohio Valley Banc Corp.*, FRB Order No. 2016-10 (June 28, 2016); *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); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

other depository organizations would continue to serve the Buena Vista market, including two with market shares greater than 15 percent each.

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 the Buena Vista market or in any other 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 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 Buena Vista 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 Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.¹⁶ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved, as well as information regarding the financial condition of the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan. The Board also consults with other relevant bank supervisory agencies.

Security Bank and FNB Bank are both well capitalized, and the resulting bank would remain so on consummation of the proposal. The proposed transaction is structured as a purchase of assets and assumption of liabilities.¹⁷ The asset quality, earnings, and liquidity of both Security Bank and FNB Bank are consistent with approval, and Security Bank appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of Security Bank after consummation of the proposal. The Board has considered Security Bank's plans for implementing the proposal and has reviewed the examination records of Security Bank and FNB Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Security Bank, 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.

¹⁶ 12 U.S.C. § 1828(c)(5) & (11).

¹⁷ The proposed transaction would be funded with cash on hand.

Security Bancorp, Security Bank, and FNB Bank are each considered to be well managed. Security Bank's directors and senior executive officers have substantial knowledge of and experience in the banking and financial services sectors.

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

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

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁹ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, 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").²⁰ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,²¹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²²

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

¹⁸ Following consummation of the proposed transaction, most FNB Bank employees would become employees of Security Bank.

¹⁹ 12 U.S.C. § 1828(c)(5).

²⁰ 12 U.S.C. § 2901 *et seq.*

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Security Bank and FNB Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Reserve Bank of Chicago (“Reserve Bank”) and other federal regulatory agencies; confidential supervisory information; and information provided by Security Bank.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by those supervisors.²³ In this case, the Board considered the supervisory views of the Reserve Bank with respect to Security Bank and the OCC with respect to FNB 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.²⁴ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small 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,²⁵ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution’s lending activities with respect to borrowers and geographies of different income levels. The institution’s lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution’s assessment areas (“AAs”); (2) the geographic distribution of the institution’s lending, including the proportion and dispersion of the institution’s lending in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;²⁶ (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.

²³ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

²⁴ 12 U.S.C. § 2906.

²⁵ 12 U.S.C. § 2801 *et seq.*

²⁶ Examiners also consider the number and amounts of small business and small farm loans to businesses and farms with gross annual revenues of \$1million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

CRA Performance of Security Bank

Security Bank was assigned an overall “Satisfactory” rating by the Reserve Bank at its most recent CRA performance evaluation, as of June 9, 2014 (“Security Bank Evaluation”).²⁷ The bank received a “Satisfactory” rating for the Lending Test.²⁸

Examiners found that Security Bank originated a majority of its loans inside its AA. Examiners also noted that the bank’s geographic distribution of loans reflected a reasonable dispersion throughout its AA. In addition, examiners found the bank’s loan distribution reflected reasonable penetration among borrowers of different income levels and farms of different revenue sizes. Examiners noted that the bank’s loan-to-deposit ratio was less than reasonable considering the characteristics of the bank, performance of competitors, and economic and demographic conditions. Examiners also noted that neither Security Bank nor the Reserve Bank received any CRA-related complaints since Security Bank’s previous CRA evaluation.

CRA Performance of FNB Bank

FNB Bank was assigned an overall CRA rating of “Outstanding” at its most recent CRA performance evaluation by the OCC, as of March 3, 2015 (“FNB Bank Evaluation”).²⁹ The bank received an “Outstanding” rating for the Lending Test.³⁰

Examiners found that FNB Bank originated a substantial majority of its loans within its AA. Examiners further found that the borrower distribution of loans represented an excellent penetration among farms of different sizes and consumers of different income levels. Examiners noted that the bank had a reasonable quarterly average loan-to-deposit ratio. Examiners also noted that no complaints were received by FNB Bank or the OCC during the evaluation period.

Additional Supervisory Views

In its review of the proposal, the Board considered the most recent consumer compliance examination and fair lending review of Security Bank by the Reserve Bank. The Board also considered the most recent consumer compliance examination of FNB Bank conducted by the OCC.

The Board has taken this information, as well as the CRA performance records of Security Bank and FNB Bank, into account in evaluating the proposed transaction, including in considering whether Security Bank has the experience and resources to effectively implement policies and programs that would assist the combined organization in helping to meet the credit needs of all of the communities within the firm’s AA.

²⁷ The Security Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed home mortgage and small farm loans originated from January 1, 2013, through December 31, 2013.

²⁸ The Security Bank Evaluation included a full-scope evaluation of four census tracts in southern Buena Vista County, Iowa.

²⁹ The FNB Bank Evaluation was conducted using Small Institution CRA Evaluation Procedures. Examiners reviewed agricultural loans and consumer loans originated from January 1, 2012, through December 31, 2014.

³⁰ The FNB Bank Evaluation included a full-scope evaluation of Buena Vista County and Clay County, both in Iowa.

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. Security Bank states that it does not anticipate discontinuing any products or services of FNB Bank. Security Bank represents that it offers a broader range of services than FNB Bank, including trust services, and that Security Bank's robust online presence would allow current FNB Bank customers to access services that are not currently offered by FNB Bank, including online banking and bill pay that can be accessed outside normal banking hours. Security Bank represents that its larger branch network would allow current FNB customers access to three banking locations within Buena Vista County, rather than the single location currently operated by FNB Bank.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the Bank Merger Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system."³¹

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³² 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.³³

The Board's experience has shown that proposals involving an acquisition of less than \$10 billion in assets, or that result in a firm with less than \$100 billion in total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal

³¹ Dodd-Frank Act § 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601-02(2010), codified at 12 U.S.C. § 1828(c)(5).

³² Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.³⁴

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that is less than \$10 billion in assets and a pro forma organization of less than \$100 billion in assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.³⁵ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

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

Establishment of a Branch

Security Bank has applied under section 9 of the FRA to establish and operate a branch at the current main office of FNB Bank.³⁶ The Board has assessed the factors it is required to consider when reviewing an application under that section.³⁷ Specifically, the Board has considered Security 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.³⁸ 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 Bank Merger Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Security Bank with all the conditions imposed in this order, including

³⁴ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

³⁵ Security Bank and FNB Bank offer a broad range of retail and commercial banking products and services. Security Bank has, and as a result of the proposed transaction would continue to have, a small market share in these products and services on a nationwide basis, and numerous competitors would remain for these products and services.

³⁶ See 12 U.S.C. § 321. Under section 9 of the FRA, state member banks may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. A national bank may establish and operate a new branch within a state in which it is situated, if such establishment and operation is authorized under applicable state law. 12 U.S.C. § 36(c). A national bank also may retain any branch following a merger that under state law may be established as a new branch of the resulting bank or retained as an existing branch of the resulting bank. See 12 U.S.C. §§ 36(b)(2), (c). Upon consummation, Security Bank's branch would be permissible under applicable state law. See Iowa Code § 524.1201.

³⁷ 12 U.S.C. § 322; 12 CFR 208.6.

³⁸ Upon consummation of the proposal, Security Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

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

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

By order of the Board of Governors, effective October 12, 2018.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board