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Legal Developments: Fourth Quarter, 2019

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

BB&T Corporation
Winston-Salem, North Carolina

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2019-16 (November 19, 2019)

BB&T Corporation ("BB&T"), Winston-Salem, North Carolina, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with SunTrust Banks, Inc. ("SunTrust"), Atlanta, Georgia, a financial holding company, and SunTrust Bank Holding Company, Orlando, Florida, SunTrust's wholly owned intermediate holding company, and thereby indirectly acquire SunTrust Bank, Atlanta, Georgia.[3] Following the proposed acquisition, SunTrust Bank would be merged with and into BB&T's subsidiary state non-member bank, Branch Banking and Trust Company ("Branch Bank"), Winston-Salem, North Carolina.[4] The resulting holding company would be renamed Truist Financial Corporation ("Truist"), and the resulting bank would be renamed Truist Bank.

BB&T, with consolidated assets of approximately $230.9 billion, is the 16th largest insured depository organization in the United States, controlling approximately $166.7 billion in consolidated deposits, which represent approximately 1.3 percent of the total amount of deposits of insured depository institutions in the United States.[5] BB&T controls Branch Bank, which operates in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia.

SunTrust, with consolidated assets of approximately $222.5 billion, is the 17th largest insured depository organization in the United States, controlling approximately $162.5 billion in consolidated deposits, which represent 1.3 percent of the total amount of deposits of insured depository institutions in the United States. SunTrust controls SunTrust Bank, which operates in Alabama, Arkansas, Florida, Georgia, Maryland,

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 BB&T would effect the acquisition by merging SunTrust with and into BB&T, with BB&T as the survivor. Shortly thereafter, SunTrust Bank Holding Company would merge with and into BB&T, with BB&T as the survivor.

4 The merger of SunTrust Bank into Branch Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the FederalDeposit Insurance Act ("Bank Merger Act").

5 Asset and deposit data are as of June 30, 2019, unless otherwise noted and do not reflect adjustments for consolidation.

Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia.

On consummation of this proposal, Truist, as the combined organization, would become the eighth largest insured depository organization in the United States, with consolidated assets of approximately $453.4 billion, which represent 2.0 percent of the total amount of assets of insured depository institutions in the United States. Truist would control consolidated deposits of approximately $330.9 billion, which represent 2.6 percent of the total deposits of insured depository institutions in the United States.[6]

Public Comments on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 9340 (March 14, 2019)).[7] The time for submitting comments has expired. The Board extended the initial period for public comment to accommodate public interest in this proposal, providing interested persons until May 3, 2019, a total of more than 50 days, to submit written comments (84 *Federal Register* 10517 (March 21, 2019)).

In addition, in light of the significant public interest in the proposal, the Board held two public meetings in Charlotte, North Carolina, and Atlanta, Georgia, to provide interested persons an opportunity to present oral testimony on the factors that the Board is required to consider under the BHC Act.[8] Approximately 116 individuals provided oral testimony at the public meetings, a subset of which also submitted written comments. In total, the Board received approximately 1050 comments from individuals and organizations. Commenters included community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals.

A majority of commenters supported the proposal.[9] Many of these commenters contended that the proposal would benefit communities and community organizations throughout the footprints of BB&T and SunTrust through increased resources and services provided by the combined organization. Commenters generally commended BB&T and SunTrust for their involvement in their communities and described positive experiences related to small business, community development, and charitable contribution and investment programs of both organizations. In addition, commenters praised both organizations for their corporate cultures, which encourage officers and employees to volunteer their time and resources and to provide services to community organizations.[10]

A significant number of commenters either opposed the proposal, requested that the Board approve the proposal subject to certain conditions, or otherwise expressed concerns about

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6 *See* Appendix I for asset and deposit data by state, for states in which Branch Bank and SunTrust Bank both have banking operations.

7 12 CFR 262.3(b).

8 The public meetings were held jointly with the FDIC on April 25, 2019, at the Charlotte Branch of the Federal Reserve Bank of Richmond and on May 3, 2019, at the Federal Reserve Bank of Atlanta.

9 The Board received approximately 949 comments in support of the proposal. Approximately 88 persons provided oral comments in support of the proposal.

10 A commenter contended that many commenters who supported the proposal received financial support from BB&T and SunTrust. The Board invites comments from all members of the public that have an interest in the application. The Board considers all timely and substantive comments on an application without regard to the commenters' motivation for supporting or opposing the application.

the proposal.[11] Many commenters questioned whether the proposal would result in public benefits. Commenters expressed concern that the proposal would result in significant job losses and branch closures. Commenters also criticized the records of performance of both institutions in meeting the credit needs of their communities, particularly minority communities and low- and moderate-income ("LMI") communities. Commenters expressed concerns that the proposal would result in fewer services and less focus on rural communities and that it would result in customer confusion, particularly among senior citizens. In addition, commenters expressed concern that the proposal would significantly reduce competition throughout the banking markets in which BB&T and SunTrust operate. Commenters also asserted that the combined institution would pose a risk to U.S. financial stability, with the resulting institution being "too big to fail."

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented at the public meetings and in written submissions. The Board also considered all of the information presented in the application and supplemental filings by BB&T, various reports filed by the relevant companies, and publicly available information. In addition, the Board consulted with the relevant financial supervisory agencies and the Department of Justice ("DOJ") and reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved. After a review of all the facts of record, and for the reasons discussed in this order, the Board concludes that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board is required to consider when reviewing the merger of bank holding companies or the acquisition of banks.[12] These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the Community Reinvestment Act of 1977 ("CRA")[13] of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the U.S. banking or financial system. For proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under

[11] The Board received approximately 104 comments in opposition to the proposal. Of these comments, approximately 70 comments were individualized written comments, and approximately 34 comments were submitted as form letters. Approximately 21persons provided oral comments in opposition to the proposal.

[12] *See* 12 U.S.C. § 1842.

[13] 12 U.S.C. § 2901 *et seq.*

state law.[14] The Board (1) may not approve an application that would permit an out-of-state bank holding company or bank to acquire a bank in a host state if the target bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[15] (2) must take into account the record of the applicant bank under the CRA and the applicant's record of compliance with applicable state community reinvestment laws; and (3) may not approve an interstate application if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[16]

For purposes of the BHC Act, the home state of BB&T is North Carolina.[17] SunTrust Bank is located in Alabama, Arkansas, Florida, Georgia, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia. BB&T is well capitalized and well managed under applicable law, and Branch Bank has a satisfactory rating under the CRA.[18] Alabama, Arkansas, Georgia, Mississippi, and Tennessee have minimum age requirements that apply to BB&T's acquisition of SunTrust.[19] Florida, Maryland, North Carolina, South Carolina, Virginia, and the District of Columbia do not have minimum age requirements. SunTrust Bank has been in existence for more than five years.

On consummation of the proposed transaction, Truist, as the combined organization, would control 2.6 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Alabama, Florida, Georgia, Maryland, South Carolina, and Tennessee each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[20] The combined organization would control approximately 3.5 percent of the total amount of deposits of insured depository institutions in Alabama, 11.0 percent in Florida, 26.7 percent in Georgia, 13.5 percent in Maryland, 13.1 percent in South Carolina, and 9.6 percent in Tennessee.[21] Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

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[14] 12 U.S.C. § 1842(d)(1)(A).

[15] 12 U.S.C. § 1842(d)(1)(B).

[16] 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 branch. The Board considers a bank to be located in any state in which the bank is chartered, headquartered, or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

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

[18] Only two of the jurisdictions in which BB&T operates—West Virginia and the District of Columbia—have state community reinvestment laws. *See* W. Va. Code §§ 31A-8B-1 to 31-8B-5; D.C. Code § 26-431.01 *et seq*. However, those laws do not appear to apply to BB&T.

[19] *See* Ala. Code § 5-13B-23 (5 years); Ark. Code Ann. §§ 23-45-102(18)(A) & 23-48-505 (5 years); Ga. Code Ann. § 7-1-622 (3 years); Miss. Code Ann. § 81-8-3 (5 years); Tenn. Code Ann. §§ 45-2-1402 & 1403 (3 years).

[20] *See* Ala. Code § 5-13B-23(b); Fla. Stat. § 658.2953; Ga. Code Ann. § 7-1-622(b)(2)(B); Md. Code Ann. Fin. Inst. § 5-905(b); S.C. Code Ann. § 34-25-240; Tenn. Code Ann. § 45-2-1404. North Carolina, Virginia, and the District of Columbia do not impose limits on the total amount of deposits an insured depository institution may control in those jurisdictions.

[21] A commenter alleged that the acquisition could result in the combined organization controlling deposits in excess of state deposit limits. As noted above, the combined organization would not control 30 percent or more of the deposits in any state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[22] 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.[23]

BB&T and SunTrust have subsidiary banks that compete directly in 81 banking markets in Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia.[24] The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative shares of total deposits in insured depository institutions in the markets ("market deposits") that BB&T would control;[25] the concentration levels of market deposits and the increase in these levels as measured by the HerfindahlHirschman Index ("HHI") under the DOJ Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[26] the number of competitors that would remain in each market; other characteristics of the markets; and, as discussed below, commitments made by BB&T to divest branches in certain markets.[27] The Board also has considered the public comments on the competitive effects of the proposal.[28]

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22 12 U.S.C. § 1842(c)(1)(A).

23 12 U.S.C. § 1842(c)(1)(B).

24 A commenter argued that the proposal would substantially lessen competition in the following areas: the Atlanta–Sandy Springs–Alpharetta, Georgia, Metropolitan Statistical Area ("MSA"); the Charlottesville, Virginia, MSA; the Deltona–Daytona Beach–Ormond Beach, Florida, MSA; the Durham–Chapel Hill, North Carolina, MSA; the Homosassa Springs, Florida, MSA; the Macon–Bibb County, Georgia, MSA; the Roanoke, Virginia, MSA; the Staunton–Waynesboro, Virginia, MSA; the Virginia Beach–Norfolk–Newport News, Virginia–North Carolina, MSA; and the Winston-Salem, North Carolina, MSA. These MSAs are not geographic banking markets and are not consistent with the Board's geographic banking markets. Consistent with Supreme Court precedent, the Board examined the competitive effects of the proposal in the relevant geographic markets, defined below. *See United States v. Phillipsburg National Bank*, 399 U.S. 350 (1970); *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963). In defining the relevant geographic market, the Board and courts have consistently found that the relevant geographic market for analyzing the competitive effects of a proposal must reflect commercial and banking realities and should consist of the local area where customers can practicably turn for alternatives. *See Philadelphia National Bank*, 374 U.S. at 357; *First York Ban Corp*, 88 *Federal Reserve Bulletin* 251, 251 (2002); *First Union Corporation*, 84 *Federal Reserve Bulletin* 489, 491–92 (1998).

25 Deposit and market share data are as of June 30, 2018, and unless otherwise noted, 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 market share calculations on a 50-percent weighted basis. *See, e.g., Hancock Whitney Corporation*, FRB Order No. 2019-12 at 6 (September 5, 2019).

26 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 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.

27 BB&T has agreed to divest approximately $2.4 billion in deposits and 30 branches across North Carolina, Virginia, and Georgia.

28 Commenters expressed concern that the proposal would increase concentration in banking markets throughout the Southeast and Mid-Atlantic, including in Florida, Georgia, Maryland, North Carolina, and Virginia.

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in 68 banking markets. On consummation, two banking markets would become highly concentrated; 10 banking markets would remain highly concentrated; 10 banking markets would become moderately concentrated; 41 banking markets would remain moderately concentrated; and five banking markets would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in most of these banking markets.[29]

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the North Lake/Sumter Area, Florida, banking market; the Atlanta, Lumpkin County, Milledgeville Area, and Wayne County banking markets, all in Georgia; the Durham–Chapel Hill and Winston-Salem banking markets, both in North Carolina; the Eastern Shore, Lexington, Martinsville, Richmond, and South Boston banking markets, all in Virginia; and the Norfolk–Portsmouth, Virginia–North Carolina, banking market warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines or would result in the market deposit share of BB&T equaling or exceeding 35 percent when using initial competitive screening data. In six of these markets, BB&T proposes to divest all branches to be acquired from SunTrust and, therefore, the levels of concentration as measured by the HHI would not materially increase on consummation of the merger and proposed divestitures.[30]

Markets without Divestitures

North Lake/Sumter Area, Florida, Banking Market. Branch Bank is the fifth largest depository institution in the North Lake/Sumter Area banking market, controlling approximately $345.8 million in deposits, which represent 7.7 percent of market deposits.[31] SunTrust Bank is the second largest depository institution in the market, controlling approximately $650.2 million in deposits, which represent 14.5 percent of market deposits. On consummation, Branch Bank would be the second largest depository institution in the North Lake/Sumter Area banking market, controlling approximately $996.0 million in deposits, which

Similarly, a commenter argued that the proposal would result in consolidated market power among only a few large banks. Commenters suggested that the reduced competition as a result of the merger would result in less favorable outcomes for consumers.

A commenter also specifically alleged that the proposal would result in a substantial lessening of competition in several MSAs because the resulting market share would be "presumed to likely increase market power" under the 2010 DOJ and Federal Trade Commission Horizontal Merger Guidelines. As noted above, the DOJ has confirmed that its Bank Merger Guidelines were not modified by the 2010 DOJ and Federal Trade Commission Horizontal Merger Guidelines.

A commenter also expressed concern that the combined organization would occupy a significant portion of the national mortgage banking market. Based on data reported for 2017 under the Home Mortgage Disclosure Act of 1975 ("HMDA"), the combined organization would represent less than two percent of nationwide mortgage originations.

[29] These banking markets and the competitive effects of the proposal in these markets are described in Appendix II.

[30] The six markets are the Lumpkin County banking market, the Wayne County banking market, the Eastern Shore banking market, the Martinsville banking market, the South Boston banking market, and the Winston-Salem banking market.

[31] The North Lake/Sumter Area banking market is defined as Sumter County, and the Census County Divisions of Fruitland Park–Lady Lake, Leesburg, and Leesburg East in Lake County, all of Florida.

would represent approximately 21.7 percent of market deposits. The HHI in this market would increase 214 points, from 1878 to 2092.

The Board has considered whether 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 North Lake/Sumter Area banking market.[32] In particular, four credit unions exert a competitive influence in the North Lake/Sumter Area banking market because each institution 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 relevant banking market.[33] The Board finds that the deposits of credit unions that exhibit these characteristics should be included at a 50-percent weight in calculating its estimate of market influence (each a "qualifying credit union"). This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration in the North Lake/Sumter Area banking market is less significant than would appear from the initial competitive screening data. After consummation, and adjusting to reflect competition from credit unions in the market, the market concentration level in the North Lake/Sumter Area banking market as measured by the HHI would increase by 198 points, from 1736 to 1934, and the market share of BB&T would increase to 20.9 percent. Seventeen other insured depository institutions, including the credit unions, would remain in the market, including one insured depository institution with a market share of more than 36.0 percent.

Atlanta, Georgia, Banking Market. Branch Bank is the fourth largest depository institution in the Atlanta banking market, controlling approximately $8.7 billion in deposits, which represent 5.1 percent of market deposits.[34] SunTrust Bank is the largest depository institution in the market, controlling approximately $47.3 billion in deposits, which represent 27.8 percent of market deposits. On consummation, Branch Bank would be the largest depository institution in the Atlanta banking market, controlling approximately $56.0 billion in deposits, which would represent approximately 32.9 percent of market deposits. The HHI in this market would increase 284 points, from 1547 to 1831.

The Board has considered whether 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 Atlanta banking market. Two thrift institutions in the market have a commercial and industrial loan portfolio similar to those of commercial banks in the Atlanta banking market, as measured in terms of the ratios of those types of loans to total loans and assets.[35] Accordingly, the Board has concluded that deposits controlled by these

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

[33] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Huntington Bancshares Incorporated*, FRB Order No. 2016-13 (July 29, 2016); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[34] The Atlanta banking market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Jasper, Newton, Paulding, Rockdale, and Walton counties; the towns of Auburn and Winder in Barrow County; and Luthersville in Meriwether County, all in Georgia.

[35] The standard treatment of thrifts in the competitive analysis is to give their deposits 50 percent weight to reflect their limited lending to small businesses relative to banks' lending levels. The Board previously has indicated, however, 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

institutions should be weighted at 100 percent in the market-share calculations. In addition, six qualifying credit unions exert a competitive influence in the Atlanta banking market.

These adjustments suggest that the resulting market concentration in the Atlanta banking market is less significant than would appear from the initial competitive screening data. Taking the adjustments into consideration, the market concentration level in the Atlanta banking market as measured by the HHI would increase by 270 points, from 1473 to 1743, and the market share of BB&T would increase to 32.1 percent upon consummation. Eighty-seven other insured depository institutions, including the thrifts and the credit unions, would remain in the market, including two insured depository institutions each with a market share of more than 18.0 percent.

Milledgeville Area, Georgia, Banking Market. Branch Bank is the third largest depository institution in the Milledgeville Area banking market, controlling approximately $120.6 million in deposits, which represent 14.7 percent of market deposits.[36] SunTrust Bank is the fourth largest depository institution in the market, controlling approximately $107.2 million in deposits, which represent 13.1 percent of market deposits. On consummation, Branch Bank would be the largest depository institution in the Milledgeville Area banking market, controlling approximately $227.9 million in deposits, which would represent approximately 27.8 percent of market deposits. The HHI in this market would increase 385 points, from 1686 to 2071.

The Board has considered whether 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 Milledgeville Area banking market. In particular, two qualifying credit unions exert a competitive influence in the Milledgeville Area market.

This adjustment for the qualifying credit unions suggests that the resulting market concentration in the Milledgeville Area banking market is less significant than would appear from the initial competitive screening data. After consummation, the market concentration level in the Milledgeville banking market as measured by the HHI would increase by 324 points, from 1457 to 1781, and the market share of BB&T would increase to 25.5 percent. Nine other insured depository institutions, including the credit unions, would remain in the market, including two insured depository institutions each with a market share of more than 21.0 percent.

Lexington, Virginia, Banking Market. Branch Bank is the largest depository institution in the Lexington banking market, controlling approximately $153.5 million in deposits, which represent 22.8 percent of market deposits.[37] SunTrust Bank is the sixth largest depository institution in the market, controlling approximately $59.0 million in deposits, which represent 8.8 percent of market deposits. On consummation, Branch Bank would remain the largest depository institution in the Lexington banking market, controlling approximately $212.5 million in deposits, which would represent approximately 31.6 percent of market deposits. The HHI in this market would increase 401 points, from 1478 to 1879.

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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., 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*.

[36] The Milledgeville Area banking market is defined as Baldwin and Hancock counties; the northern half of Wilkinson county that includes the towns of Gordon, Irwinton, Ivey, and McIntyre; and the Little River Census County Division in Putnam County, all in Georgia.

[37] The Lexington banking market is defined as the independent cities of Lexington and Buena Vista and Rockbridge County, all in Virginia.

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 Lexington banking market. In particular, two qualifying credit unions exert a competitive influence in the banking market.

This adjustment for the qualifying credit unions suggests that the resulting market concentration in the Lexington banking market is less significant than would appear from the initial competitive screening data. After consummation, and adjusting to reflect competition from the two credit unions referenced above, the market concentration level in the Lexington banking market as measured by the HHI would increase by 376 points, from 1395 to 1771, and the market share of BB&T would increase to 30.6 percent. Eight other insured depository institutions, including the credit unions, would remain in the market, including four insured depository institutions each with a market share of more than 10.0 percent.

Norfolk–Portsmouth, Virginia–North Carolina, Banking Market. Branch Bank is the fourth largest depository institution in the Norfolk–Portsmouth banking market, controlling approximately $2.3 billion in deposits, which represent 12.7 percent of market deposits.[38] SunTrust Bank is the third largest depository institution in the market, controlling approximately $2.8 billion in deposits, which represent 16.0 percent of market deposits. On consummation, Branch Bank would be the largest depository institution in the Norfolk–Portsmouth banking market, controlling approximately $5.1 billion in deposits, which would represent approximately 28.7 percent of market deposits. The HHI in this market would increase 407 points, from 1667 to 2074.

The Board has considered whether 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 Norfolk–Portsmouth banking market. In particular, one thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Norfolk–Portsmouth banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations. In addition, eight qualifying credit unions exert a competitive influence in the Norfolk–Portsmouth banking market.

These adjustments suggest that the resulting market concentration in the Norfolk–Portsmouth banking market is less significant than would appear from the initial competitive screening data. After consummation, and adjusting to reflect competition from the eight credit unions and the deposits of the thrift being weighted at 100 percent in the market, the market concentration level in the Norfolk–Portsmouth banking market as measured by the HHI would increase by 347 points, from 1435 to 1782, and the market share of BB&T would increase to 26.5 percent. Twenty-four other insured depository institutions, including the thrift and the credit unions, would remain in the market, including two insured depository institutions each with a market share of more than 20.0 percent.

Richmond, Virginia, Banking Market. Branch Bank is the fourth largest depository institution in the Richmond banking market, controlling approximately $3.2 billion in deposits,

[38] The Norfolk–Portsmouth banking market is defined as the cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach; the Carrsville District in Isle of Wight County, all in Virginia; and Currituck and Gates counties, both in North Carolina.

which represent 8.5 percent of market deposits.[39] SunTrust Bank is the third largest depository institution in the market, controlling approximately $4.5 billion in deposits, which represent 12.0 percent of market deposits. On consummation, Branch Bank would be the second largest depository institution in the Richmond banking market, controlling approximately $7.7 billion in deposits, which would represent approximately 20.5 percent of market deposits. The HHI in this market would increase 205 points, from 2078 to 2283.

The Board has considered whether 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 Richmond banking market. In particular, one qualifying credit union exerts a competitive influence in the Richmond banking market.

This adjustment for the qualifying credit union suggests that the resulting market concentration in the Richmond banking market is less significant than would appear from the initial competitive screening data. After consummation, and adjusting to reflect competition from the credit union, the market concentration level in the Richmond banking market as measured by the HHI would increase by 194 points, from 1963 to 2157, and the market share of BB&T would increase to 20.0 percent. Twenty-nine other insured depository institutions, including the credit union, would remain in the market, including one insured depository institution with a market share of more than 38.0 percent.

Markets with Divestitures[40]

Eastern Shore, Virginia, Banking Market. Branch Bank is the fourth largest depository institution in the Eastern Shore banking market, controlling approximately $107.1 million in deposits, which represent 16.1 percent of market deposits.[41] SunTrust Bank is the third largest depository institution in the market, controlling approximately $125.6 million in deposits, which represent 19.0 percent of market deposits. On consummation, Branch Bank would be the largest depository institution in the Eastern Shore banking market, controlling approximately $232.7 million in deposits, which would represent approximately 35.1 percent of market deposits. The HHI in this market would increase 613 points, from 2663 to 3276.

To mitigate the potentially adverse competitive effects of the proposal in the Eastern Shore banking market, BB&T has committed to divest SunTrust's only two branches in the

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39 The Richmond banking market is defined as the independent cities of Colonial Heights, Hopewell, Petersburg, and Richmond; the counties of Amelia, Charles City, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, and Prince George; and the Cuckoo, Jackson, Mineral, and Mountain Road districts in Louisa County, all in Virginia.

40 As a condition of consummation of the proposed merger, BB&T has committed that it will execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. BB&T has provided a similar commitment to the DOJ. BB&T also has committed to complete the divestiture of branches within 180 days after consummation of the proposed transaction. In addition, BB&T has committed that if the proposed divestiture is not completed within the 180-day period, BB&T would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991). For each branch to be divested, the amount of deposits to be divested has been determined through a householding methodology approved by the DOJ. This householding methodology assigns particular customers to a household and then assigns certain households to the divested branch, generally where the customers execute teller transactions most frequently. Therefore, subject to certain limited exceptions, the proposed divestitures include all deposits of customers that are householded to the divested branches, which is intended to minimize the chance that those customers would revert to the combined organization following the divestitures. Because of this householding methodology, there are de minimis increases in the HHI in several markets despite the divestiture of all of SunTrust Bank's branches in several markets.

41 The Eastern Shore banking market is defined as Accomack and Northampton counties, both in Virginia.

banking market, accounting for a total of approximately $129.3 million in deposits, to a competitively suitable institution.[42] Other factors also mitigate the competitive effects of the proposal in the Eastern Shore banking market. Two qualifying credit unions exert a competitive influence in the Eastern Shore banking market.

After accounting for the divestiture of SunTrust's only two branches in the market and weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 12.3 percent of market deposits, the HHI would increase by 3 points to a level of 2043, and seven other insured depository institutions, including the credit unions, would remain in the market, including two insured depository institutions each with a market share of more than 29.0 percent.

Martinsville, Virginia, Banking Market. Branch Bank is the second largest depository institution in the Martinsville banking market, controlling approximately $336.6 million in deposits, which represent 22.5 percent of market deposits.[43] SunTrust Bank is the third largest depository institution in the market, controlling approximately $253.4 million in deposits, which represent 17.0 percent of market deposits. On consummation, Branch Bank would become the largest depository institution in the Martinsville banking market, controlling approximately $590.1 million in deposits, which would represent approximately 39.6 percent of market deposits. The HHI in this market would increase 767 points, from 2252 to 3019.

To mitigate the potentially adverse competitive effects of the proposal in the Martinsville banking market, BB&T has committed to divest all three of SunTrust's branches in the Martinsville banking market, accounting for a total of approximately $255.7 million in deposits, to a competitively suitable institution.[44] Other factors also mitigate the competitive effects of the proposal in the Martinsville banking market. Two qualifying credit unions exert a competitive influence in the Martinsville banking market.

After accounting for the divestiture of all three of SunTrust's branches in the Martinsville banking market and weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 21.7 percent of market deposits, the HHI would decrease by 2 points from 2127 to a level of 2125,[45] and twelve other insured depository institutions, including the credit unions, would remain in the market, including one insured depository institution with a market share of more than 36.0 percent.

South Boston, Virginia, Banking Market. Branch Bank is the fourth largest depository institution in the South Boston banking market, controlling approximately $88.2 million in deposits, which represent 16.0 percent of market deposits.[46] SunTrust Bank is the fifth largest depository institution in the market, controlling approximately $68.5 million in deposits, which represent 12.4 percent of market deposits. On consummation, Branch Bank would be the largest depository institution in the South Boston banking market, controlling approximately $156.7 million in deposits, which would represent approximately

[42] As noted above, the difference between the amount of deposits included in the initial competitive screening data and those deposits to be divested is attributable to the householding methodology approved by the DOJ.

[43] The Martinsville banking market is defined as the independent city of Martinsville; Henry County; and Patrick County (excluding the Dan River District), all in Virginia.

[44] *See supra* note 42.

[45] The pro forma HHI decrease in the Martinsville banking market is attributable to the householding methodology for assigning accounts to particular branches approved by the DOJ, which results in SunTrust assigning additional deposits to its branch in the Martinsville banking market that exceed the standard Summary of Deposits ("SOD") data used to generate the initial HHI screening data. *See supra* note 40.

[46] The South Boston banking market is defined as Halifax County, Virginia.

28.3 percent of market deposits. The HHI in this market would increase 395 points, from 1844 to 2239.

To mitigate the potentially adverse competitive effects of the proposal in the South Boston banking market, BB&T has committed to divest SunTrust's only branch in the banking market, accounting for a total of approximately $67.9 million in deposits, to a competitively suitable institution. Other factors also mitigate the competitive effects of the proposal in the South Boston banking market. Three qualifying credit unions exert a competitive influence in the South Boston banking market.

After accounting for the divestiture of SunTrust's only branch in the market and weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 15.1 percent of market deposits, the HHI would increase by 1 point to a level of 1638, and eight other insured depository institutions, including the credit unions, would remain in the market, including four insured depository institutions each with a market share of more than 17.0 percent.

Lumpkin County, Georgia, Banking Market. Branch Bank is the second largest depository institution in the Lumpkin County banking market, controlling approximately $107.2 million in deposits, which represent 26.9 percent of market deposits.[47] SunTrust Bank is the fourth largest depository institution in the market, controlling approximately $56.7 million in deposits, which represent 14.2 percent of market deposits. On consummation, Branch Bank would be the largest depository institution in the Lumpkin County banking market, controlling approximately $164.0 million in deposits, which would represent approximately 41.2 percent of market deposits. The HHI in this market would increase 767 points, from 2284 to 3051.

To mitigate the potentially adverse competitive effects of the proposal in the Lumpkin County banking market, BB&T has committed to divest SunTrust's only branch in the banking market, accounting for a total of approximately $63.2 million in deposits, to a competitively suitable institution.[48]

After accounting for the divestiture of SunTrust's only branch in the market, the combined organization would control approximately 25.3 percent of market deposits, the HHI would decrease by 36 points to a level of 2248, and five other insured depository institutions would remain in the market, including two insured depository institutions each with a market share of more than 15.0 percent.[49]

Wayne County, Georgia, Banking Market. Branch Bank is the second largest depository institution in the Wayne County banking market, controlling approximately $47.1 million in deposits, which represent 18.9 percent of market deposits.[50] SunTrust Bank is the fourth largest depository institution in the market, controlling approximately $36.7 million in deposits, which represent 14.7 percent of market deposits. On consummation, Branch Bank would remain the second largest depository institution in the Wayne County banking market, controlling approximately $83.8 million in deposits, which would represent

[47] The Lumpkin County banking market is defined as Lumpkin County, Georgia.

[48] *See supra* note 42.

[49] The pro forma HHI decrease in the Lumpkin County banking market is attributable to the householding methodology approved by the DOJ, which results in SunTrust assigning additional deposits to its branch in the Lumpkin County banking market that exceed the SOD data used to generate the initial competitive screening data.

[50] The Wayne County banking market is defined as Wayne County, Georgia.

approximately 33.7 percent of market deposits. The HHI in this market would increase 558 points, from 2501 to 3059.

To mitigate the potentially adverse competitive effects of the proposal in the Wayne County banking market, BB&T has committed to divest SunTrust's only branch in the banking market, accounting for a total of approximately $35.4 million in deposits, to a competitively suitable institution.[51] Other factors also mitigate the competitive effects of the proposal in the Wayne County banking market. Two qualifying credit unions exert a competitive influence in the Wayne County banking market.

After accounting for the divestiture of SunTrust's only branch in the market and weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 17.4 percent of market deposits, the HHI would increase by 4 points to a level of 2057, and six other insured depository institutions, including the credit unions, would remain in the market, including two insured depository institutions each with a market share of more than 15.0 percent.

Winston–Salem, North Carolina, Banking Market. Branch Bank is the largest depository institution in the Winston-Salem banking market, controlling approximately $24.7 billion in deposits, which represent 80.2 percent of market deposits.[52] SunTrust Bank is the fourth largest depository institution in the market, controlling approximately $627.0 million in deposits, which represent 2.0 percent of market deposits. On consummation, Branch Bank would remain the largest depository institution in the Winston–Salem banking market, controlling approximately $25.3 billion in deposits, which would represent approximately 82.3 percent of market deposits. The HHI in this market would increase 327 points, from 6521 to 6848.

To mitigate the potentially adverse competitive effects of the proposal in the Winston-Salem banking market, BB&T has committed to divest all nine of SunTrust's branches in the Winston-Salem banking market, accounting for a total of approximately $577.8 million in deposits, to a competitively suitable institution.[53] Other factors also mitigate the competitive effects of the proposal in the Winston-Salem banking market. Five qualifying credit unions exert a competitive influence in the Winston-Salem banking market.

After accounting for the divestiture of all nine of SunTrust's branches in the market and weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 79.7 percent of market deposits, and the HHI would increase by 30 points to a level of 6429. In addition, 21 other insured depository institutions, including the credit unions, would remain in the Winston-Salem banking market.

Durham–Chapel Hill, North Carolina, Banking Market. Branch Bank is the fifth largest depository institution in the Durham–Chapel Hill banking market, controlling approximately $1.3 billion in deposits, which represent 8.7 percent of market deposits.[54] SunTrust Bank is the third largest depository institution in the market, controlling approximately $2.2 billion in deposits, which represent 14.7 percent of market deposits. On consummation, Branch Bank would be the second largest depository institution in the Durham–Chapel Hill banking market, controlling approximately $3.6 billion in deposits, which

[51] *See supra* note 42.

[52] The Winston–Salem banking market is defined as Davie, Forsyth, Stokes, and Yadkin counties, all in North Carolina.

[53] *See supra* note 42.

[54] The Durham–Chapel Hill banking market is defined as Chatham, Durham, Orange, and Person counties, all in North Carolina.

would represent approximately 23.4 percent of market deposits. The HHI in this market would increase 255 points, from 2220 to 2475.

To mitigate the potentially adverse competitive effects of the proposal in the Durham–Chapel Hill banking market, BB&T has committed to divest 11 SunTrust branches, accounting for a total of approximately $1.1 billion in deposits, to a competitively suitable institution. Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Durham–Chapel Hill banking market. In particular, one thrift institution in the market has a commercial and industrial loan portfolio similar to those of commercial banks in the Durham–Chapel Hill banking market, as measured in terms of the ratios of those types of loans to total loans and assets. The Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations. In addition, four qualifying credit unions exert a competitive influence in the Durham–Chapel Hill banking market.

After accounting for the 11 branch divestitures and weighting the deposits of the thrift at 100 percent and the deposits of the four credit unions at 50 percent, the combined organization would control approximately 15.7 percent of market deposits, the HHI would increase by 29 points to a level of 2162, and 19 other insured depository institutions, including the credit unions, would remain in the market, including two insured depository institutions each with a market share of more than 14.0 percent.

Conclusion Regarding Competitive Effects

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal with the proposed divestitures of branches in the banking markets, as discussed above, would not likely have a significantly adverse effect on competition in those markets 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 all of the facts of record, including the proposed divestitures, and for the reasons explained above, 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 banking markets in which BB&T and SunTrust compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

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

Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

BB&T, SunTrust, and their subsidiary depository institutions are each well capitalized, and the combined organization would remain so on consummation of the proposed merger.[55] The proposed transaction is a bank holding company merger that is structured as a share exchange.[56] The asset quality, earnings, and liquidity of both Branch Bank and SunTrust Bank are consistent with approval, and BB&T and SunTrust appear to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of BB&T, SunTrust, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BB&T, 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.

BB&T, SunTrust, and their subsidiary depository institutions are each considered to be well managed.[57] The combined organization's proposed directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and the proposed risk-management program for the combined organization appears consistent with approval of this expansionary proposal.

The Board also has considered BB&T's plans for implementing the proposal. BB&T has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal.[58] BB&T

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[55] Because BB&T determined that the proposed acquisition of SunTrust would result in a material change in BB&T's risk profile and corporate structure, BB&T submitted an updated capital plan ("Resubmitted Capital Plan") to reflect the proposed acquisition. *See* 12 CFR 225.8(e)(4)(i). In reviewing the Resubmitted Capital Plan, the Federal Reserve assessed the combined organization's ability to maintain capital levels above minimum regulatory capital ratios, after undertaking all capital actions included in the updated capital plan under baseline and stressful conditions throughout a nine-quarter planning horizon. Based on this assessment, the Board does not object to BB&T's Resubmitted Capital Plan.

[56] At the time of the proposed acquisition, each share of SunTrust common stock would be converted into a right to receive shares of BB&T common stock based on an exchange ratio. In addition, each share of certain noncumulative perpetual preferred SunTrust stock would be converted into a right to receive substantially similar newly issued preferred BB&T stock.

[57] Commenters expressed concerns that the combined institution would lack robust risk-management practices and policies, putting individuals at risk, and suggested that the merger could present heightened cybersecurity and privacy risks. BB&T represents that it has made enhancements to its enterprise-wide risk-management program in recent years, including rebuilding its cybersecurity framework and investing in new cybersecurity technologies and tools. BB&T further represents that the combined organization would increase its investment in the Truist Bank's cyber protections and information technology resiliency.

Some commenters also expressed concerns about managerial resources of SunTrust and BB&T generally, given negative prior experiences with branch-level staff at both banks. BB&T represents that the combined organization would strive to maintain a customer-focused culture. In addition, complaints based on an individual customer transaction, such as a complaint relating to an individual loan denial or a loan foreclosure proceeding, generally are not considered to be substantive comments (see SR Letter 97-10 at https://www.federalreserve.gov/boarddocs/srletters/1997/SR9710.HTM), and, thus, generally are not take into consideration by the Board in its evaluation of the statutory factors governing the transaction.

[58] A commenter alleged that BB&T has not successfully integrated past acquisitions, including the acquisitions of Susquehanna Bank and National Penn Bank. As noted above, BB&T is devoting sufficient resources to address the post-integration process of this proposal. BB&T further represents that it would conduct detailed planning and multiple integration testing exercises prior to the implementation of any systems conversions or

represents that the combined organization would select strong capabilities and systems from the respective existing risk-management governance, operations, and systems of BB&T and SunTrust to create a firm-wide risk-management program for the combined organization. Both BB&T's and SunTrust's existing risk-management policies, procedures, and controls are considered acceptable from a supervisory perspective. In addition, BB&T's and SunTrust's management have the experience and resources to operate the combined organization in a safe and sound manner, and the combined organization would integrate existing management and personnel from both BB&T and SunTrust.[59] Similarly, BB&T represents that an experienced team of management and other personnel is overseeing the integration planning process across all business lines and support units of both BB&T and SunTrust.

BB&T also represents that it has allocated additional staff and resources to satisfy the additional regulatory requirements that apply to bank holding companies with $250 billion or more in total consolidated assets.[60] Specifically, Category III standards would apply to a bank holding company with assets of $250 billion or more that does not meet the criteria for Category I or Category II standards.[61] Category III standards include annual supervisory stress tests, company-run stress tests every other year, the countercyclical capital buffer, a supplementary leverage ratio, a liquidity coverage ratio requirement, and other reporting and liquidity requirements.[62]

Based on all the facts of record, including BB&T's and SunTrust's supervisory records, managerial and operational resources, and plans for operating the combined organization after consummation, the Board determines that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of BB&T and SunTrust in combatting money-laundering activities, are consistent with approval.[63]

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other IT migration/integration actions involving customer accounts. BB&T and SunTrust also represented that the combined organization would conduct extensive training of branch and call-center personnel designed to ensure that upon consummation of the proposal, the systems conversion would not adversely impact customers, and that any questions from customers could be answered promptly.

[59] The combined organization would have a board of 22 directors, 11 each from BB&T and SunTrust. In addition, the 14 senior executive officers at the combined organization would be composed of seven current senior executive officers from each of BB&T and SunTrust.

[60] *See* 12 CFR 249 & 252.

[61] On October 10, 2019, the Board adopted final rules tailoring the application of prudential standards to large banking organizations based on the risk profile of the banking organization (tailoring rules). *See* 84 *Fed. Reg*. 59032, 59035 (November 1, 2019). The tailoring rules will be effective December 31, 2019.

[62] To facilitate continuity of requirements, BB&T has committed that the combined organization would remain subject to certain prudential standards that currently apply to BB&T and SunTrust, as well as certain standards that would apply to a bank holding company that would be subject to Category III standards after the effective date of the tailoring rules.

[63] A commenter alleged that the Board should not have lifted its consent order against BB&T regarding anti-money laundering issues, suggesting that such issues were not fully remediated. On January 25, 2017, BB&T entered into a Cease and Desist Order Issued Upon Consent Pursuant to the Federal Deposit Insurance Act with the Board and the North Carolina Office of the Commissioner of Banks relating to deficiencies in BB&T's overall program for Bank Secrecy Act/anti-money-laundering ("BSA/AML") compliance (the "BSA/AML Order"). The BSA/AML Order required BB&T to, among other things, take the following actions: strengthen board oversight of BB&T's firm-wide compliance risk-management program with regard to compliance with BSA/AML requirements; develop and implement a comprehensive BSA/AML plan, including an effective institution-wide BSA risk-assessment program that clearly defined acceptable BSA/AML risks; ensure that BSA/AML issues were appropriately tracked, escalated, and reviewed by senior management; create a process for periodically reevaluating staffing needed in relation to its compliance risk profile; and identifying procedures for periodic testing of the effectiveness of the compliance risk management program.

The North Carolina Office of the Commissioner of Banks terminated its participation in the BSA/AML Order on June 28, 2018. On April 18, 2019, the Board terminated the BSA/AML Order with BB&T in light of the corrective actions taken by BB&T to remediate its BSA/AML deficiencies. In particular, BB&T took a number of corrective actions, including hiring a new leadership team for its BSA/AML compliance; establishing a BSA/AML oversight committee to provide oversight of the BSA/AML compliance program; implementing an

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.[64] 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 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,[65] 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 LMI neighborhoods.[66]

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Branch Bank and SunTrust Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by BB&T, and the public comments on the proposal.

Summary of Public Comments on Convenience and Needs

As noted above, in total, the Board received approximately 1050 public comments on the proposal from community groups, nonprofit organizations, customers of the two banking organizations, and other interested organizations and individuals. The Board held two public meetings to facilitate receiving comments on the proposal from interested members of the public. A significant number of comments were submitted, both orally and in writing, through this process.

Many commenters supported the proposal. In general, these commenters asserted that BB&T and SunTrust provide valuable services to their communities. Commenters contended that the proposal would expand opportunities for community groups, LMI persons, and small businesses. These commenters also praised BB&T and SunTrust and their management for each bank's community outreach efforts and support for community programs and initiatives.

The Board also received a large number of comments opposing the proposal. Several commenters alleged that BB&T and SunTrust were not meeting the credit needs of

enhanced BSA/AML policy; developing and implementing new customer risk rating processes; and conducting new BSA/AML compliance training.

[64] 12 U.S.C. § 1842(c)(2).

[65] 12 U.S.C. § 2901(b).

[66] 12 U.S.C. § 2903.

minority and LMI communities and borrowers, particularly in Florida and Durham, North Carolina, or unbanked and underbanked populations. One commenter alleged that BB&T made a disproportionately low number of home purchase loans to African American and Latino borrowers in the Houston, Texas, New York, New York, and Charleston, West Virginia, areas based on data reported for 2017 under HMDA. Commenters also alleged that BB&T and SunTrust engaged in economic exclusion in the communities in which they operate, including in certain African American neighborhoods and communities. Another commenter objecting to the proposal alleged that BB&T has engaged in redlining in Dallas and Houston, Texas.[67] Specifically, the commenter alleged that BB&T disfavors certain African American neighborhoods in Dallas and Houston and has limited its lending, marketing activities, community development activities, and branching in those areas.

Several commenters expressed concern that branch closures or changes in customer accounts could adversely affect communities served by BB&T and SunTrust, especially in Durham, North Carolina, The Villages, Florida, and in rural communities, including in West Virginia.[68] Commenters also expressed concern that any branch closures or account changes could have a disproportionately adverse effect on senior citizens[69] or persons with disabilities.[70]

Many commenters also expressed concern that the proposed merger could result in job losses, particularly in Winston-Salem and Durham, both in North Carolina, as well as rural areas generally.[71] Other commenters contended that the larger combined bank would be less concerned with customer service in local communities, such as Luzerne County, Pennsylvania. One commenter expressed concern about potential abuses of consumers by SunTrust.[72]

Several commenters requested that the Board condition its approval on a variety of commitments by BB&T regarding racial equity and diversity and inclusion; affordable

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[67] 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 at https://www.ffiec.gov/pdf/fairlend.pdf (August 2009).

[68] Commenters representing organizations located in West Virginia expressed a heightened concern regarding branch closures because BB&T is the largest bank in West Virginia, and SunTrust recently closed all of its branches in the state.

[69] For example, some commenters expressed concern that the proposed merger may result in changes in accounts or services currently provided by SunTrust Bank or Branch Bank that could inconvenience or confuse customers. In particular, commenters asserted that any change in sign-on procedures and other website navigation protocols could cause confusion for seniors. Another commenter expressed concerns that changes in account numbers could inconvenience those who rely on online banking.

[70] A commenter alleged that the closure of branches that are highly accessible or close to public transportation could adversely affect persons with disabilities.

[71] BB&T represents that the combined organization would take a number of steps to minimize job losses. For example, BB&T has indicated that all performing customer-facing employees would have a position with the combined organization upon consummation. Additionally, BB&T has indicated that any displaced employees would receive priority consideration for internal job opportunities and would be actively encouraged to apply for positions for which they are interested and qualified. Those displaced employees who do not remain with the combined organization would receive a market-based severance package and be offered outplacement services to assist with external job searches. Nevertheless, the potential for job losses resulting from a merger is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); *see also Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445 (1996); *Community Bank System, Inc*., FRB Order No. 2015-34 (November 18, 2015); and *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016).

[72] The Board also received several comments arguing that SunTrust should not provide loans or other funding to private prisons. In addition, the Board received a comment urging BB&T to cease doing business with and lending money to firearm and ammunition manufacturers. These comments are outside the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. *See Western Bancshares*, 480 F.2d at 752–54.

housing for and lending to LMI communities and individuals; community development programs in the combined organization's footprint; financial and nonfinancial commitments in West Virginia; recruitment from and engagement with Historically Black Colleges and Universities ("HBCUs"); support of public and technical schools; programs targeted at home retention, adult literacy, workforce development, disability services, and extending credit to the unbanked and underbanked; a specified hourly minimum wage for employees; a specified level of philanthropic giving in relation to corporate earnings; and robust risk assessment tools. Several commenters requested that the Board condition approval of the application on establishment of and performance under a Community Benefits Plan.[73]

Businesses of the Involved Institutions and Response to Comments

BB&T and Branch Bank offer financial products and services to individual customers and businesses, primarily through Branch Bank's branch network in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Branch Bank offers a broad range of banking products and services to its customers, including retail consumer and commercial banking, mortgage and consumer lending, lease financing, asset-based lending, discount brokerage services, annuities and mutual funds, life insurance, property and casualty insurance, health insurance, loan servicing for third-party investors, private bank and trust services, payments processing, and cash management and treasury services.

SunTrust and SunTrust Bank also offer financial products and services to individual customers and businesses, primarily through SunTrust Bank's branch network in Alabama, Arkansas, Florida, Georgia, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and the District of Columbia. SunTrust offers a broad range of banking products and services to its customers, including mortgage lending, student lending, consumer lending, small business lending, commercial loan and lease financing, trust and wealth management services, insurance products on an agency basis, investment and mergers and acquisition advisory services, capital markets and investment banking services, and treasury and cash management services.

BB&T denies the commenters' HMDA-related allegations regarding the Newark–Jersey City, New York–New Jersey–Pennsylvania, MSA ("New York MSA"); the Charleston, West Virginia, MSA ("Charleston MSA"); the Dallas–Fort Worth–Arlington, Texas, MSA ("Dallas MSA"); and the Houston–The Woodlands–Sugar Land, Texas, MSA ("Houston MSA"); arguing that Branch Bank's record of home mortgage lending does not disproportionately or discriminatorily impact African Americans or Hispanics. BB&T represents that in the New York MSA, the bank only has one branch, and the market demographics near the branch provide limited opportunities to extend mortgage loans to minority applicants in any one year. BB&T asserts that in the Charleston MSA, the market demographics similarly limit Branch Bank's opportunities to extend mortgage loans to minority applicants, but notes that the bank's complete HMDA data reflect additional applications from minority borrowers beyond home purchase applications. BB&T notes that Branch Bank

[73] On July 16, 2019, BB&T and SunTrust announced a Community Plan, under which they have indicated that the combined organization would lend or invest $60 billion to LMI borrowers and in LMI communities over a three-year period, from 2020 to 2022. The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., CIT Group, Inc.*, FRB Order No. 2015-20 at 24 n.54 (July 19, 2015); *Citigroup Inc.*, 88 *Federal Reserve Bulletin* 485 (2002); and *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 AAs.

has significantly increased its receipt of home mortgage loan applications from and home mortgage loan originations to minorities in Houston and Dallas. BB&T also represents that the bank maintains a robust and comprehensive compliance program to ensure credit and financial products are available for all the communities it services. In addition, BB&T asserts that Branch Bank offers many programs and community development activities to increase affordable housing opportunities for LMI individuals and majority-minority communities.

BB&T asserts that Branch Bank is actively involved in West Virginia and has maintained a high level of CRA activity in the state. Specifically, BB&T represents that the bank has actively assisted affordable housing, social services, economic development and community revitalization and stabilization efforts in West Virginia through its community development lending and qualified investment and grant activities. BB&T asserts that, in Florida, both Branch Bank and SunTrust Bank have increased their lending to and community development activities in minority communities. BB&T notes that both banks have strong CRA, fair lending, and consumer compliance programs throughout their footprints, including in Durham, North Carolina, and the banks have conducted outreach initiatives to increase mortgage and small business lending in majority-minority and LMI communities in Durham, North Carolina, and elsewhere.[74]

BB&T represents that both Branch Bank and SunTrust Bank are assisting in meeting the needs of the unbanked and underbanked by offering a full range of loan and deposit products, including numerous affordable home mortgage programs, government-sponsored loan programs for home mortgage borrowers and small businesses, affordable deposit products for small businesses and nonprofit organizations and low-cost deposit products for consumers. Similarly, both banks represent that they provide free financial education resources for consumers and small businesses.

BB&T represents that Truist Bank would consider accessibility when making decisions on products and services and branching, and would form an Enterprise Accessibility Center of Excellence to implement physical and digital accessibility improvements. BB&T asserts that these efforts would make Truist Bank's products and services more accessible to all customers, including senior citizens and persons with disabilities. BB&T represents that Truist Bank would develop written communications and would mobilize call centers to minimize the effects of the merger on customers, including senior citizens.

Records 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,[75] which in this case, are the FDIC for Branch Bank, the Federal Reserve Bank of Atlanta for SunTrust Bank, and the CFPB for both banks. In addition, the Board considers information provided by the applicant and by public commenters.

[74] Commenters alleged that BB&T did not provide the same level of leadership training to African American residents in Durham and students at HBCUs. These commenters suggested that the combined organization could address the alleged inequities by ensuring that any advisory committees established to advise on community needs include representatives from African American communities and organizations, as well as HBCUs. BB&T represents that its Leadership Institute has partnered with 14 HBCUs to provide enhanced leadership training to more than 730 college students.

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

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

In general, federal financial supervisors apply a lending test ("Lending Test"), an investment test ("Investment Test"), and a service test ("Service Test") to evaluate the performance of large insured depository institutions, such as Branch Bank and SunTrust Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas ("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;[77] (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.[78]

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

[76] 12 U.S.C. § 2906.

[77] 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).

[78] *See* 12 CFR 228.21 *et seq*.

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

CRA Performance of Branch Bank

Branch Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of January 17, 2017 ("Branch Bank Evaluation").[80] Branch Bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment Test and the Service Test. The Board has consulted with the FDIC regarding the Branch Bank Evaluation.

Lending Test

Examiners found that Branch Bank's overall lending levels reflected good responsiveness to community credit needs. According to examiners, a high percentage of the loans made by Branch Bank were made in its AAs, and the distribution of such loans reflected good penetration among retail customers of different income levels and businesses of different sizes. Examiners noted that Branch Bank used innovative and flexible lending practices in order to serve AA credit needs. Examiners identified Branch Bank as a leader in making community development loans.

Areas of Concern to Commenters—In the Charleston MSA, examiners noted that the bank's lending reflected adequate responsiveness to AA credit needs. Examiners found that the geographic distribution of home mortgage loans reflected adequate penetration throughout the AA and the borrower profile reflected a good distribution. Examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans.

In the Dallas MSA, examiners found that Branch Bank's lending levels reflected good responsiveness to AA credit needs. Examiners noted that the bank's geographic distribution and distribution of borrowers reflected good penetration throughout the AA. Examiners further noted that the bank used flexible lending practices and made a relatively high level of community development loans.

In the Houston MSA, examiners found that Branch Bank's lending levels reflected good responsiveness to AA credit needs. Examiners noted that the bank's geographic distribution of home mortgage loans reflected good penetration, while the distribution of borrowers reflected adequate penetration, throughout the AA. In addition, examiners noted that the bank used flexible lending practices and was a leader in making community development loans.

In Florida, examiners found that the bank's geographic distribution of loans reflected adequate penetration throughout the bank's AAs, and the borrower profile also reflected an adequate distribution. In addition, examiners noted that the bank used flexible lending practices and was a leader in making community development loans.

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[80] The Branch Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), community development loans, qualified investments, branching activities, and community development services from January 1, 2014, through December 31, 2016. The Branch Bank Evaluation covered Branch Bank's 138 AAs located in 13 states and nine multistate metropolitan statistical areas ("MSAs"): Alabama; Florida; Georgia; Kentucky; Maryland; New Jersey; North Carolina; Pennsylvania; South Carolina; Tennessee; Texas; Virginia; West Virginia; Cincinnati, Kentucky–Ohio, MSA; Charlotte–Concord–Gastonia, North Carolina–South Carolina, MSA; Columbus, Alabama–Georgia, MSA; Cumberland, Maryland–West Virginia, MSA; Hagerstown–Martinsburg, Maryland–West Virginia, MSA; Kingsport–Bristol–Bristol, Tennessee–Virginia, MSA; Louisville–Jefferson County, Indiana–Kentucky, MSA; Myrtle Beach–Conway–North Myrtle Beach, North Carolina–South Carolina, MSA; and Washington–Arlington–Alexandria, District of Columbia–Maryland–Virginia–West Virginia, MSA. The Branch Bank Evaluation included a full-scope review of 51 of these AAs, including all nine multistate MSAs. A limited-scope review was conducted of the remaining 87 AAs.

In the New York MSA, examiners noted that Branch Bank's lending reflected adequate responsiveness to AA credit needs, and the geographic distribution reflected adequate penetration throughout the AA. Examiners found that the bank used innovative and/or flexible lending practices to serve the AA.

In North Carolina, Branch Bank received an overall "High Satisfactory" rating for the Lending Test. In the Durham–Chapel Hill, North Carolina, MSA ("Durham MSA"), examiners found that the bank's performance was consistent with the bank's statewide performance.

In Pennsylvania, Branch Bank received an overall "High Satisfactory" rating for the Lending Test. In the Scranton–Wilkes Barre, Pennsylvania, MSA ("Scranton MSA"), which includes Luzerne County, Pennsylvania, examiners found that Branch Bank's lending performance in the AA was consistent with the bank's statewide performance.

In West Virginia, examiners found that the geographic distribution of loans reflected adequate penetration throughout the bank's AAs and the borrower profile reflected a good distribution. In addition, examiners noted that the bank used flexible lending practices and made a relatively high level of community development loans.

Investment Test

Examiners found that Branch Bank had an excellent level of qualified community development investments and grants and often was in a leadership position with respect to such investments, particularly those that were not routinely provided by private investors. Examiners noted that Branch Bank exhibited excellent responsiveness to credit and community economic development needs and made significant use of innovative and/or complex investments to support community development initiatives.

Areas of Concern to Commenters—In the Charleston MSA, examiners noted that Branch Bank provided a significant level of qualified investments in the AA. Examiners found that the bank's investments were responsive to credit and community development needs and were considered innovative and complex.

In the Dallas MSA, examiners found that Branch Bank provided a significant level of qualified investments in the AA. Examiners noted that the investments were responsive to credit and community development needs and were considered innovative and complex.

In the Houston MSA, examiners found that Branch Bank provided an excellent level of qualified investments in the AA. Examiners noted that the bank's investments were responsive to credit and community development needs and were considered innovative and complex.

In Florida, examiners noted that the bank had an excellent level of qualified investments, which were responsive to community development needs and included innovative and complex characteristics.

In the New York MSA, examiners noted that Branch Bank provided an adequate level of qualified investments in the AA, and that the investments were responsive to AA credit and community development needs.

In North Carolina, Branch Bank received an overall "Outstanding" rating for the Investment Test. In the Durham MSA, examiners found that the bank's performance was consistent with its overall statewide performance.

In Pennsylvania, Branch Bank received an overall "High Satisfactory" rating for the Investment Test. In the Scranton MSA, examiners found that Branch Bank's performance was not inconsistent with the bank's statewide performance in this category.

In West Virginia, examiners noted that the bank had an excellent level of qualified investments, which were responsive to community development needs and included innovative and complex characteristics.

Service Test

Examiners noted that Branch Bank's delivery systems were accessible to essentially all portions of its AAs. Examiners also noted that, to the extent changes were made, Branch Bank's opening and closing of branches did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners found that Branch Bank's services were tailored to the convenience and needs of the AAs, particularly of LMI geographies and individuals. Examiners characterized Branch Bank as a leader in providing community development services.[81]

Areas of Concern to Commenters—In the Charleston MSA, examiners noted that the bank's delivery systems were readily accessible to all portions of the AA, and the opening and closing of branches generally had not adversely affected the accessibility of the bank's delivery systems.

In the Dallas MSA, examiners found that Branch Bank's delivery systems were reasonably accessible to essentially all portions of the AA, and the opening and closing of branches had improved the accessibility of the bank's delivery systems. Examiners noted that the bank's services and business hours were tailored to the convenience and needs of the AA, and the bank provided a relatively high level of community development services.

In the Houston MSA, examiners found that Branch Bank's delivery systems were reasonably accessible to essentially all portions of the AA. Examiners noted that the opening and closing of branches had improved the accessibility of the bank's delivery systems. Examiners also noted that the services and business hours provided by the bank were tailored to the convenience and needs of the AA.

In Florida, examiners found that the bank's delivery systems were accessible to essentially all portions of the institution's AAs. Examiners noted that Branch Bank's opening and closing of branches did not adversely affect the accessibility of the bank's delivery systems, particularly in LMI geographies or to LMI individuals.

In the New York MSA, examiners found that Branch Bank's delivery systems were reasonably accessible to essentially all portions of the AA. Examiners noted that the opening and closing of branches generally had not adversely affected the accessibility of the bank's delivery systems.

[81] Some commenters objected to the proposal noting that examiners cited a substantive violation of Regulation B, which implements the Equal Credit Opportunity Act, in the Branch Bank Evaluation. According to the Branch Bank Evaluation, the violations were limited to one loan product, and the bank implemented changes to policies, procedures, training programs, internal assessments, and other practices to prevent future discriminatory or other illegal credit practices. Examiners concluded that the violations did not warrant a downgrade of Branch Bank's CRA rating, considering the bank's overall CRA performance, the extent and impact of the findings, and the immediate corrective actions taken by Branch Bank.

In North Carolina, Branch Bank received an overall "Outstanding" rating for the Service Test. In the Durham MSA, examiners found that the bank's performance was consistent the bank's statewide performance.

In Pennsylvania, Branch Bank received an overall "High Satisfactory" rating for the Service Test. In the Scranton MSA, examiners found that Branch Bank's lending activities were consistent with the bank's statewide performance.

In West Virginia, examiners found that the bank's delivery systems were accessible to essentially all portions of the institution's AAs. Examiners noted that Branch Bank's opening and closing of branches did not adversely affect the accessibility of the bank's delivery systems, particularly in LMI geographies or to LMI individuals.

Branch Bank's Efforts since the Branch Bank Evaluation

BB&T represents that, since the Branch Bank Evaluation, Branch Bank has continued to provide levels and types of CRA services, investments, and activities in all of its AAs that are consistent with its overall "Outstanding" CRA performance rating. BB&T contends that Branch Bank has continued to originate a substantial number of home mortgage loans to LMI borrowers and in LMI census tracts. BB&T notes that the bank also originated a number of small business and farm loans, including in LMI census tracts, and made significant community development investments and loans throughout the bank's local communities. BB&T represents that Branch Bank has continued to support affordable housing through its community development lending, investments, grants and services activities, including through its participation in various Federal Housing Finance Agency mortgage loan programs targeted toward first-time homebuyers and LMI borrowers.

In addition, Branch Bank represents that it has made a wide range of community development loans to support affordable housing, economic development, revitalization of communities, and the provision of community services for the LMI community. BB&T asserts that Branch Bank's management and employees have continued to dedicate volunteer hours to community service projects, including to community organizations that provide employment services, financial education, and literacy training for children and families.

Areas of Concern to Commenters—In the Dallas MSA, BB&T asserts that Branch Bank has strong fair lending and consumer compliance risk-management programs and has undertaken efforts to increase its mortgage and small business lending in majority-minority and LMI communities.

In the Houston MSA, BB&T asserts that Branch Bank has provided community development loans and investments focused on serving the needs of minority communities through programs that support affordable housing and minority-owned businesses. BB&T represents that Branch Bank has provided a number of homebuyer and financial literacy courses that benefited minority individuals and communities.

In the Durham MSA, BB&T asserts that Branch Bank has conducted a number of individual and community outreach activities to enhance lending to minority individuals and communities. BB&T represents that the bank's outreach has included support for programs for homebuyer education, financial literacy, community and economic stabilization, as well as for other organizations addressing affordable housing in majority-minority communities in the Durham MSA.

In Florida, BB&T asserts that Branch Bank has taken a number of steps to increase home mortgage lending to minorities. BB&T represents that Branch Bank plans to open de novo branches in LMI and/or majority- minority census tracts in Miami and Tampa in 2019.

In West Virginia, BB&T represents that the bank has maintained a high level of home mortgage lending, small business lending, community development lending and qualified investments or grants. BB&T asserts that Branch Bank has provided community development loans, investments, and grants to support affordable housing, social services, economic development, and community revitalization and stabilization in the state.

CRA Performance of SunTrust Bank

SunTrust Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta, as of September 16, 2016 ("SunTrust Bank Evaluation").[82] SunTrust Bank received "High Satisfactory" ratings for the Lending and Investment tests and a "Low Satisfactory" rating for the Service Test.

Lending Test

Examiners noted that the overall geographic distribution of HMDA-reportable lending reflected adequate penetration in LMI geographies, and the overall geographic distribution of small business lending reflected good penetration in LMI geographies. Examiners found that the overall distribution of HMDA-reportable lending among borrowers of different income levels was good, and the overall distribution of small business lending among businesses of different sizes was adequate. Examiners noted that SunTrust Bank made a relatively high level of community development loans.

Areas of Concern to Commenters—In Florida, SunTrust Bank received a "High Satisfactory" rating for the Lending Test. Examiners found that the geographic distribution of loans reflected good penetration throughout the AAs, and the distribution of loans by borrower income reflected good penetration among customers of different income levels and businesses of different revenue sizes. Examiners noted that the bank made a relatively high level of community development loans in its AAs. In The Villages MSA, examiners noted that the bank's Lending Test performance in the AA was below the bank's overall statewide performance.

In North Carolina, although SunTrust Bank received an overall "High Satisfactory" rating for the Lending Test, in the Durham MSA, examiners found that the bank's lending performance was adequate. Examiners noted that the bank's geographic distribution of loans reflected adequate penetration throughout the AA. Examiners further noted that SunTrust Bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes.

[82] The SunTrust Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and CRA small business lending data from January 1, 2014, to December 31, 2015, as well as community development loans, investments, and services from January 1, 2013, to December 31, 2015. The SunTrust Bank Evaluation covered SunTrust Bank's 107 AAs located in nine states and four multistate MSAs: Alabama; Florida; Georgia; Maryland; North Carolina; South Carolina; Tennessee; Virginia; West Virginia; Charlotte, North Carolina–South Carolina MSA; Chattanooga, Tennessee–Georgia MSA; Memphis, Tennessee–Mississippi–Arkansas MSA; and Washington–Arlington–Alexandria, District of Columbia–Maryland–Virginia–West Virginia, MSA. The SunTrust Bank Evaluation included a full-scope review of 18 of these AAs, including the four multistate MSAs. A limited-scope review was conducted in the remaining 89 AAs.

Investment Test

Examiners found that SunTrust Bank made a significant level of qualified community development investments in response to AA community development needs. Examiners noted that most of SunTrust Bank's investments supported affordable housing, primarily through the purchase of government guaranteed mortgage-backed securities and investments in Low-Income Housing Tax Credit equity funds that financed affordable multifamily rental housing. Examiners identified SunTrust Bank as a national leader in utilizing the New Market Tax Credit Program.

Areas of Concern to Commenters—In Florida, SunTrust Bank received an overall rating of "High Satisfactory" for the Investment Test. Examiners found that the bank provided a significant level of qualified community development investments and grants that were responsive to several identified community development needs of its AAs. In The Villages MSA, examiners noted that the bank's investment performance in the AA was below the bank's overall statewide performance.

In North Carolina, SunTrust Bank received an overall "High Satisfactory" rating for the Investment Test. In the Durham MSA, examiners found that SunTrust Bank made an adequate level of qualified investments and grants in the AA relative to the bank's presence and community development investment opportunities in the AA.

Service Test

Examiners found that SunTrust Bank's retail delivery systems were reasonably accessible to geographies and individuals of different income levels in the bank's AAs. Examiners also found that SunTrust Bank provided a relatively high level of community development services. Examiners noted that eight branch closures were located in low-income tracts and 21 were in moderate-income tracts, which may have adversely affected the accessibility of banking services in some AAs.

Area of Concern to Commenters—In Florida, SunTrust Bank received an overall "Low Satisfactory" rating for the Service Test. Examiners found that the bank's retail services were reasonably accessible to the bank's geographies and individuals of different income levels in the bank's AAs. Examiners noted that the bank provided an adequate level of community development services throughout the AAs. In The Villages MSA, examiners noted that the bank's Service Test performance was below the bank's overall statewide performance.

In North Carolina, SunTrust Bank received an overall "High Satisfactory" rating for the Service Test. In the Durham MSA, examiners found that SunTrust Bank's Service Test performance was good based on the accessibility of the bank's retail services and leadership in providing community development services.

SunTrust Bank's Efforts Since the SunTrust Bank Evaluation

SunTrust represents that SunTrust Bank's CRA performance since the 2016 evaluation generally has been consistent with the bank's overall "Satisfactory" rating, and the bank's performance in several categories of CRA activity has significantly improved. SunTrust represents that the bank has made a significant number of HMDA loans to LMI borrowers and in LMI census tracts. SunTrust further represents that the bank has made small business loans in LMI census tracts and community development loans and investments geared toward revitalizing LMI geographies, providing affordable housing, and serving low-income communities.

In addition, SunTrust represents that SunTrust Bank has made a significant number of contributions and grants to nonprofit entities focused on providing affordable housing, community services, economic development, and revitalization and stabilization to LMI customers and communities. SunTrust further represents that the bank has made significant strides in providing services throughout its communities through volunteer community development service hours focused on financial education, professional development, and affordable housing.

Areas of Concern to Commenters—In the Durham MSA, SunTrust asserts that SunTrust Bank has implemented initiatives focused on benefitting LMI and minority individuals and communities. SunTrust represents that the bank has increased its community development loans, investments, and grants to and in minority communities, with a focus on affordable housing, economic development, revitalization and stabilization of distressed and underserved communities, and community services to assist LMI individuals and communities.

In Florida, SunTrust asserts that SunTrust Bank's community development services focus on affordable housing, financial education, professional development, and other community services that benefit LMI and minority communities. SunTrust represents that SunTrust Bank has provided community development loans and grants to and qualified investments in projects or organizations that served minority communities throughout Florida.

Branch Closures

As noted above, many commenters expressed concern that the proposal could result in a significant number of branch consolidations and closures, which could negatively impact LMI and rural communities. The federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.[83] Examiners noted in the Branch Bank Evaluation that Branch Bank's opening and closing of branches had not adversely affected the accessibility of the bank's delivery systems, particularly in LMI geographies or to LMI individuals. With respect to SunTrust Bank, examiners noted that some branch closures and consolidations by SunTrust Bank may have adversely affected the accessibility of banking services in some of the bank's AAs.

The Board also has considered the fact that federal banking law provides a specific mechanism for addressing branch closings, including the provision of notice to the public and the appropriate federal supervisory agency before the branch is closed.[84] BB&T represents that any branch closures or consolidations would be subject to the combined organization's framework for ensuring that individual branch closure and consolidation decisions comply with applicable laws and regulations. In particular, BB&T represents that any branch closures or consolidations would take account of the potential impact to LMI neighborhoods and/or majority-minority census tracts, and would be subject to a thorough CRA and fair lending analysis. BB&T further represents that any merger-related closures or consolidations would not occur in any states in which BB&T and SunTrust have overlapping operations for at least one year after consummation of the proposal. BB&T also represents that Truist Bank would not close any branches in communities of 2,500 or fewer

[83] *See, e.g.*, 12 CFR 228.24(d)(2). In addition, the Board notes that the FDIC, as the primary federal supervisor of Truist Bank, would continue to evaluate the bank's branch closures in the course of conducting CRA performance evaluations.

[84] *See* 12 U.S.C. § 1831r-1. As federal banking law requires, a bank must provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

persons for three years following consummation of the proposal. Finally, BB&T represents that Truist Bank would seek to open at least 15 new branches throughout its footprint in LMI and/or majority-minority census tracts through 2022.

Additional Supervisory Views

In connection with its review of the proposal, the Board consulted the FDIC as the primary federal supervisor of Branch Bank. The FDIC is reviewing the bank merger underlying this proposal and, in acting on the bank merger application, must consider similar statutory factors under the Bank Merger Act, including regarding convenience and needs, that the Board must consider under the BHC Act. The FDIC received the same comments on the Bank Merger Act application as the Board received on the BHC Act application, and the FDIC is evaluating these comments in connection with its review of the Bank Merger Act application. The Board considered the views of the FDIC regarding Branch Bank's CRA and consumer compliance records, record of compliance with fair lending laws and regulations, and policies and procedures relating to fair lending and other consumer protection laws and regulations. This included consideration of Branch Bank's lending record. The Board also considered the views of the Federal Reserve Bank of Atlanta regarding SunTrust Bank's CRA and consumer compliance records, record of compliance with fair lending laws and regulations, and policies and procedures relating to fair lending and other consumer protection laws and regulations. In addition, the Board considered the views of the CFPB regarding the consumer compliance records of both Branch Bank and SunTrust Bank.

The Board has taken the views of the FDIC, Federal Reserve Bank of Atlanta, and CFPB, as well as all of the information discussed above, into account in evaluating this proposal. The Board has considered whether BB&T and SunTrust have the experience and resources to ensure that the combined organization effectively implements policies and programs that would allow the combined organization to help meet the credit needs of the communities within its AAs. The Board expects Truist to ensure that Truist Bank complies with any commitments or conditions that the FDIC may obtain or impose in connection with its action on the bank merger proposal.

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. BB&T represents that the combined organization would be better able to leverage increased scale to invest further in innovation and technology for the benefit of its customers. In addition, BB&T represents that existing customers of both Branch Bank and SunTrust Bank would have access to a more extensive branch and ATM network, as well as a broader offering of products and services. BB&T also represents that corporate customers of both Branch Bank and SunTrust Bank would benefit from Truist Bank's larger lending limit for individual corporate borrowers.

On November 19, 2019, the Board issued a consent order against SunTrust Bank under the Federal Deposit Insurance Act ("Consent Order") addressing concerns that SunTrust Bank engaged in certain unfair or deceptive acts or practices ("UDAP") in violation of section 5 of the Federal Trade Commission Act of 1914.[85] The conduct addressed in the Consent Order related to misleading or deceptive disclosures or unfair practices connected with the marketing of, enrollment in, and billing for several types of add-on and similar

[85] 15 U.S.C. § 45.

products offered to business customers with deposit accounts or that utilized SunTrust credit card and debit card processing services.

SunTrust Bank terminated the practices addressed in the Consent Order in 2016 and 2017, and has cooperated with the Board's investigation. SunTrust Bank has taken steps on its own initiative to address the Board's concerns and to initiate UDAP compliance enhancements, including by changing disclosures related to the terms and conditions for add-on products and stopping automatic enrollment of accountholders in other products. Following the receipt of complaints in 2016, SunTrust Bank issued approximately $3 million in fee refunds to business accountholders. In addition, SunTrust Bank proactively conducted an internal review in 2016 to determine if other products presented similar concerns. Upon the identification of related issues as part of its internal review, SunTrust Bank initiated an additional $4.25 million in fee refunds to business accountholders related to other products. In total, SunTrust Bank has indicated that, has it has repaid approximately $8.8 million in fees to business accountholders affected by these practices since 2016.

Among other things, the Consent Order requires SunTrust Bank to create a procedure for verifying that the restitution previously provided by SunTrust Bank has been appropriate and for providing additional restitution if required. This Order is conditioned on BB&T's commitment to cause Branch Bank and any successor subsidiary bank to comply with the obligations of the Consent Order.

Although the Consent Order requires SunTrust Bank to submit a plan to enhance its UDAP compliance risk-management program, BB&T represents that the UDAP compliance program of Branch Bank, including detection and monitoring controls, would be implemented at Truist Bank. BB&T also represents that the board of directors and executive management of Truist would set a tone and culture from the top of the combined organization regarding Truist Bank's UDAP compliance program.

Regarding the UDAP compliance program, BB&T represents that the roles and functions of BB&T's first, second, and third lines of defense structure would be transitioned to Truist, although some responsibilities would be reallocated to be better aligned to Truist's reporting hierarchy. BB&T also represents that a newly hired Chief Compliance Officer ("CCO") would report directly to Truist's Chief Risk Officer ("CRO"), and BB&T's current CRO would lead Truist's risk-management function. The CCO and the CCO's direct report, the leader of the Fair Lending and Responsible Banking team at the combined organization, would be primarily responsible for UDAP compliance, as well as implementation of an enhanced, firm-wide compliance risk-management program. That program would include oversight of compliance with all laws, rules, regulations, regulatory guidance, and policies and procedures. BB&T also represents that the Truist CCO would have responsibility for identifying, assessing, controlling, measuring, monitoring, and reporting all compliance risks across the combined organization. In addition to reporting to the CRO, the CCO would report to appropriate executive-level risk management committees and the combined organization's board-level risk committee. Finally, BB&T represents that all Truist Bank staff would be required to take training specific to UDAP compliance annually.

Based on its review of the record, the Board finds that BB&T's existing UDAP compliance program is satisfactory and, in light of BB&T's representations, that the UDAP compliance program of the combined company would be consistent with approval of the proposal.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA; the institutions' records of compliance with fair lending and other consumer protection laws; the views of the FDIC, the Federal Reserve Bank of Atlanta, and CFPB; confidential supervisory information; information provided by BB&T; public comments on the proposal; and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval. The Board expects Truist to implement policies, programs, and procedures that are commensurate with the increased size and complexity of the institution.

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."[86]

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.[87] 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.[88]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system.[89] The Board also has considered the relative degree of difficulty of resolving the resulting firm. The Board reviewed publicly available data, comments received from the public, data compiled through the supervisory process, and data obtained through information requests to the institutions involved in the proposal, as well as qualitative information.

Size. An organization's size is one important indicator of the risk that the organization may pose to the U.S. banking or financial system. Congress has imposed specific size-based

[86] 12 U.S.C. § 1842(c)(7).

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

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

[89] Forty-three commenters (including 34 who submitted form comments) expressed concerns that the proposed merger would have adverse effects on U.S. financial stability. Some commenters specifically alleged that the combined bank would be viewed as "too big to fail," while other commenters expressed general concerns about the potential for the merger or the combined organization to have a significant effect on the economy. One commenter expressed specific concern about the elevated risk to the Southeast and Mid-Atlantic regions if the combined institution were to fail.

limitations on the amount of deposits and liabilities a banking organization may control.[90] In addition, section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA"), requires the Board to apply enhanced prudential standards to bank holding companies with $250 billion or more in total consolidated assets.[91] Size also is among the factors that the Board must take into consideration in differentiating among banking organizations under section 165.[92]

In this case, the Board has considered measures of the combined organization's size relative to the U.S. financial system, including the combined organization's consolidated assets, consolidated liabilities,[93] total leverage exposure, and U.S. deposits. As a result of the proposed acquisition, the combined organization would become either the eighth or ninth largest U.S. financial institution[94] based on assets, liabilities, and total leverage exposure with 1.8, 1.7, and 1.8 percent of the U.S. financial system total, respectively. Based on deposits, the combined organization would become the sixth largest U.S. financial institution, with 2.5 percent of the total deposits. These measures suggest that, although the combined organization would be large on an absolute basis, its shares of United States financial system assets, liabilities, total leverage exposure, and deposits would remain modest, and its shares of national deposits and liabilities would fall well below the 10 percent limitations set by Congress.

Although the proposed transaction would increase BB&T's overall size and result in Truist Bank becoming the sixth largest commercial bank in the United States based on U.S. deposits, the combined organization's larger size must be viewed in conjunction with other metrics. Accordingly, the Board has considered other factors, both individually and in combination with size, to evaluate the likely impact of this transaction on the stability of the U.S. banking or financial system.[95]

Substitutability. The Board has examined whether BB&T or SunTrust engage in any activities that are critical to the functioning of the U.S. financial system and whether there would be adequate substitute providers that could quickly perform such activities should the combined organization suddenly be unable to do so as a result of severe financial distress. The Board primarily evaluated the roles of BB&T and SunTrust in payments activities, assets under custody activities, and underwriting activities. Neither BB&T nor SunTrust is a major provider of these services. The combined organization would account for approximately 0.2 percent of payments activities, 0.1 percent of assets under custody, and 0.8 percent of underwriting activities in the U.S. financial system. In addition, bilateral repurchase transactions by BB&T and SunTrust, respectively, are relatively de minimis.

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[90] 12 U.S.C. §§ 1842(d)(2)(A) & 1852 (imposing a 10 percent nationwide deposit limit and a 10 percent nationwide liabilities limit on potential combinations by banking organizations).

[91] *See* 12 U.S.C. § 5365.

[92] *See* EGRRCPA § 401(a)(1)(B)(i) (codified at 12 U.S.C. § 5365(a)(2)(A)). The Board also has previously used size as a simple measure of a banking organization's potential systemic impact and risk, and has differentiated the stringency of capital and liquidity requirements based on total consolidated asset size.

[93] The Board has considered both consolidated liabilities on the combined organization's pro forma balance sheet and liabilities as computed under the limitations on consolidated liabilities in section 622 of the Dodd-Frank Act. *See* 12 U.S.C. § 1852.

[94] In this context, a U.S. financial institution includes all insured depository institutions, insured depository institution holding companies, nonbank financial companies supervised by the Board under Title I of the Dodd-Frank Act, and any foreign bank or company treated as a bank holding company. *See* 12 U.S.C. § 1852(a)(2).

[95] In addition, the Board also considered the Globally Systemic Important Banks ("GSIB") Surcharge score of the combined organization. The GSIB Surcharge score is a measure of a firm's systemic importance. *See* 80 *Fed. Reg*. 49082 (August 14, 2015). On consummation of the proposal, the combined organization would have a GSIB method 1 score of 29 points, well below the minimum threshold (130 basis points) that identifies a financial institution as a GSIB. In addition, the combined organization's score suggests that Truist poses relatively little systemic risk, with a score that is under 10 percent of the average of the top five institutions.

The combined organization would account for less than 0.2 percent of total U.S. repurchase transactions in both the bilateral and triparty market segments.

For most of these activities, the combined organization would have a small share on a nationwide basis, and numerous competitors would remain.

Interconnectedness. The Board has examined data to determine whether financial distress experienced by the combined organization could create financial instability by being transmitted to any other institutions or markets within the U.S. banking or financial system. Specifically, the Board considered measures of interconnectedness between the combined organization and the rest of the financial system during financial distress, such as potential direct losses to counterparties, asset price declines due to fire sales, and contagion effects.

BB&T and SunTrust do not engage in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined organization. The combined organization's use of wholesale funding, as a share of the U.S. financial system wholesale funding usage, is approximately 0.6 percent and is well below its corresponding share of U.S. financial system consolidated assets. The combined organization's shares of U.S. financial system intra-financial system assets and liabilities also are less than 1 percent.

Complexity. The Board has considered the extent to which the combined organization would contribute to the overall complexity of the U.S. banking or financial system. In this analysis, the Board considered BB&T's and SunTrust's over-the-counter derivatives exposures ("OTC derivatives"), holdings of Level 3 assets,[96] and volume of trading book and available-for-sale securities. The combined organization's level of notional OTC derivatives exposures would represent approximately 0.1 percent of the total U.S. market. Similarly, the combined organization's Level 3 assets represent approximately 2.4 percent of the total U.S. market share. This amount is mitigated further by the fact that the majority of these assets consist of mortgage servicing rights, which generally can be separated easily from a bank organization's other assets. Finally, the combined trading activity of BB&T and SunTrust is minor, accounting for less than 0.1 percent of trading of equity securities and equity derivatives and of corporate bond U.S. market segments.

The Board also has considered whether the complexity of the combined organization's assets and liabilities would hinder the organization's timely and efficient resolution in the event the organization were to experience financial distress. BB&T and SunTrust do not engage in complex activities, such as being a core clearing and settlement organization for critical financial markets, that might complicate the resolution process by increasing the complexity, costs, or timeframes involved in a resolution. Under the circumstances, resolving the combined organization would not appear to involve a level of cost, time, or difficulty such that it would cause a significant increase in risk to the stability of the U.S. banking or financial system.

Cross-Border Activity. The Board has examined the cross-border activities of BB&T and SunTrust to determine whether the cross-border presence of the combined organization would create difficulties in coordinating any resolution, which could significantly increase the risk to stability of the U.S. banking or financial system. At consummation, the

[96] Level 3 assets are defined in the Statement of Financial Accounting Standards No. 157 ("Fair Value Measurements") as assets whose accounting valuations are derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable. These assets are deemed complex to evaluate and cannot be measured at fair value because there is not a clear market price or a standard valuation model. A higher share of these assets could lead to disorderly resolution of an entity in case of failure.

combined organization would engage in limited activities outside the United States. In particular, the combined organization would account for less than 0.1 percent of either total cross-border claims or total cross-border liabilities of banking organizations filing an FR Y-15.

Financial Stability Factors in Combination. The Board has assessed the foregoing factors individually and in combination to determine whether interactions among them might mitigate or exacerbate risks suggested by looking at them individually. The Board also has considered whether the proposed transaction would provide any stability benefits and whether prudential standards applicable to the combined organization would offset any potential risks.[97]

For instance, concerns regarding the combined organization's size would be greater if BB&T or SunTrust also were highly interconnected to many different segments of the U.S. banking or financial system through counterparty relationships or other channels, or if the combined organization were to participate to a larger extent than BB&T or SunTrust do in short-term funding and capital markets. The Board's level of concern also would be greater if the structure and activities of the combined organization were sufficiently complex that, if the combined organization were to fail, it would be difficult to resolve the organization without causing significant disruptions to other financial institutions or markets.

As discussed above, the combined organization would not be highly interconnected. Furthermore, the organizational structure and operations of the combined organization would be centered on a commercial banking business, and in the event of distress, the resolution process would be handled in a predictable manner by relevant authorities. The Board also has considered other measures that are suggestive of the degree of difficulty with which the combined organization could be resolved in the event of a failure, such as the organizational and legal complexity and cross-border activities of the resulting firm. These measures suggest that the combined organization would be significantly less complicated to resolve than the largest U.S. financial institutions.

In addition, both BB&T and SunTrust are predominately engaged in retail commercial banking activities.[98] The combined 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 combined 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 U.S. banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

[97] *See* 12 U.S.C. § 5365.

[98] Truist would primarily offer retail consumer and commercial banking, mortgage and consumer lending, lease financing, asset-based lending, discount brokerage services, annuities and mutual funds, life insurance, property and casualty insurance, health insurance, loan servicing for third-party investors, private bank and trust services, payments processing, cash management and treasury services, student lending, small business lending, trust and wealth management services, investment and mergers and acquisition advisory services, capital markets, and investment banking services. In each of its activities, the combined firm would have a small market share on a nationwide basis, and numerous competitors would remain for these services.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[99] 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 Truist with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments and representations made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective November 19, 2019.

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

Ann E. Misback
Secretary of the Board

[99] A commenter requested that the Board hold public hearings or additional public meetings on the proposal. The Board has considered the commenter's request in light of all the facts of record. As noted above, the Board held public meetings in Charlotte, North Carolina, and Atlanta, Georgia. In addition, the Board extended the initial period for public comment to accommodate public interest in this proposal, providing interested persons until May 3, 2019, a total period of more than 50 days, to submit written comments. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. For these reasons, and based on all the facts of record, the Board has determined that public hearings or additional public meetings are not required or warranted in this case. Accordingly, the request for public hearings or additional public meetings on the proposal is denied.

In addition, two commenters requested a further extension of the comment period for the proposal. As noted above, the Board provided for an extended comment period of more than 50 days. During this time, the commenters submitted detailed comments in writing regarding 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 commenters' request for additional time to comment does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to further extend the comment period.

Appendix I

Asset and Deposit Data in States where Branch Bank and SunTrust Bank Both Operate

State / District	Branch Bank			SunTrust Bank			Truist Bank		
	Rank of Insured Depository Institution[1] by Assets	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Assets	Deposits Controlled (in billions)	Percent of Total Deposits	Rank of Insured Depository Institution by Assets	Deposits Controlled (in billions)	Percent of Total Deposits
Alabama	6th	3.7	3.7	56th	0.2	<1	6th	3.9	3.9
Florida	7th	18.3	3.1	3rd	50.6	8.6	3rd	68.9	11.8
Georgia	5th	12.6	5	1st	54.4	21.7	1st	66.9	26.7
Maryland	7th	10.1	7	6th	10.4	7.2	2nd	20.5	14.1
North Carolina	3rd	52.7	14.4	5th	8.5	2.3	2nd	61.2	16.7
South Carolina	3rd	8.4	9.8	7th	3	3.5	3rd	11.4	13.3
Tennessee	9th	3	1.9	3rd	13.9	9	3rd	16.9	10.9
Virginia	5th	23.5	7.3	6th	20.6	6.4	3rd	44.1	13.6
District of Columbia	9th	1.2	2.3	5th	3.4	6.7	5th	4.6	9

[1] In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Appendix II

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Washington, District of Columbia–Maryland–Virginia–West Virginia – Washington, District of Columbia; Charles, Calvert, Frederick, Montgomery, and Prince George's counties; District 7 in Anne Arundel County; the Clarksville and Savage districts in Howard County, all in Maryland; Arlington, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Stafford, and Warren counties; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, all of Virginia; and Jefferson County, West Virginia.						
BB&T Pre-Consummation	6	$14.0B	6.7			
SunTrust	4	$19.1B	9.1			
BB&T Post-Consummation	2	$33.1B	15.8	1106	121	75
Brevard County, Florida – Brevard County, Florida.						
BB&T Pre-Consummation	6	$650.9M	7			
SunTrust	3	$1.3B	14.2			
BB&T Post-Consummation	1	$1.9B	21.2	1428	198	18
Citrus County, Florida – Citrus County, Florida.						
BB&T Pre-Consummation	7	$81.0M	3.5			
SunTrust	1	$631.2M	27.3			
BB&T Post-Consummation	1	$712.2M	30.8	1761	192	11
Dayton Beach Area, Florida – Flagler County; the towns of Allandale, Daytona Beach, Daytona Beach Shores, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ormond-by-the-Sea, Pierson, Port Orange, and South Daytona in Volusia County; and the town of Astor in Lake County, all in Florida.						
BB&T Pre-Consummation	6	$386.0M	4.1			
SunTrust	1	$2.6B	27.2			
BB&T Post-Consummation	1	$2.9B	31.3	1679	223	19
Fort Myers Area, Florida – Lee County (less the towns located on Gasparilla Island) and the town of Immokalee in Collier County, both in Florida.						
BB&T Pre-Consummation	5	$928.4M	6			
SunTrust	3	$2.1B	13.4			
BB&T Post-Consummation	1	$3.0B	19.4	1074	161	30
Fort Pierce Area, Florida – St. Lucie and Martin counties (less the towns of Indiantown and Hobe Sound), both in Florida.						
BB&T Pre-Consummation	11	$286.6M	3.3			
SunTrust	6	$716.1M	8.3			
BB&T Post-Consummation	3	$1.0B	11.7	1131	55	16
Fort Walton Beach Area, Florida – Okaloosa and Walton counties and the western half of Holmes County, including the town of Ponce de Leon, all in Florida.						
BB&T Pre-Consummation	18	$56.4M	1			
SunTrust	10	$231.0M	4.4			
BB&T Post-Consummation	9	$287.4M	5.4	813	10	27
Jacksonville Area, Florida – Baker, Clay, Duval, and Nassau counties; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, all in Florida; and the city of Folkston in Charlton County, Georgia.						
BB&T Pre-Consummation	8	$606.1M	1.2			
SunTrust	5	$1.8B	3.7			
BB&T Post-Consummation	5	$2.4B	4.9	2719	9	32
Miami–Fort Lauderdale Area, Florida – Broward and Miami-Dade counties, both in Florida.						
BB&T Pre-Consummation	9	$5.6B	3			
SunTrust	7	$8.6B	4.7			
BB&T Post-Consummation	5	$14.2B	7.7	834	29	76
Naples Area, Florida – Collier County (minus the town of Immokalee), Florida.						
BB&T Pre-Consummation	16	$220.7M	1.3			
SunTrust	9	$564.8M	3.3			
BB&T Post-Consummation	9	$785.5M	4.6	883	9	33

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Appendix II—*continued*

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Ocala Area, Florida – Marion County, Florida.						
BB&T Pre-Consummation	11	$126.0M	2.1			
SunTrust	1	$1.1B	18.2			
BB&T Post-Consummation	1	$1.2B	20.3	1213	73	20
Orlando Area, Florida – Orange, Osceola, and Seminole counties; the western half of Volusia County; and Lake County (minus the city of Astor and the Census County Divisions of Fruitland Park-Lady Lake, Leesburg, and Leesburg East), all in Florida.						
BB&T Pre-Consummation	5	$2.0B	3.8			
SunTrust	2	$10.6B	20.7			
BB&T Post-Consummation	1	$12.6B	24.5	1413	158	45
Panama City Area, Florida – Bay and Gulf counties; and the southern half of Washington County, including the towns of Vernon and Wausau, all in Florida.						
BB&T Pre-Consummation	11	$75.2M	2.5			
SunTrust	7	$211.8M	6.9			
BB&T Post-Consummation	5	$287.0M	9.4	1140	34	17
Pensacola Area, Florida – Escambia and Santa Rosa counties, both in Florida.						
BB&T Pre-Consummation	13	$108.1M	1.5			
SunTrust	8	$302.1M	4.2			
BB&T Post-Consummation	6	$410.2M	5.7	1394	12	18
Polk County, Florida – Polk County, Florida.						
BB&T Pre-Consummation	7	$383.0M	5			
SunTrust	3	$1.1B	14.2			
BB&T Post-Consummation	2	$1.4B	19.2	1613	143	17
Punta Gorda Area, Florida –Charlotte County east of Charlotte Harbor and the Myakka River; and Sarasota County east of the Myakka River and south of Interstate 75, including the town of North Port, all in Florida.						
BB&T Pre-Consummation	9	$132.3M	3.8			
SunTrust	3	$430.0M	12.2			
BB&T Post-Consummation	3	$562.3M	16.6	1421	100	13
Saint Augustine Area, Florida – St. Johns County (minus the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, Switzerland, and Hastings), Florida.						
BB&T Pre-Consummation	6	$118.1M	5.7			
SunTrust	5	$160.4M	7.8			
BB&T Post-Consummation	5	$278.5M	13.5	1544	89	12
Sarasota, Florida – Manatee County, Sarasota County (less 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, 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, all in Florida.						
BB&T Pre-Consummation	5	$1.2B	5.8			
SunTrust	3	$2.2B	10.7			
BB&T Post-Consummation	2	$3.4B	16.5	1055	123	34
Tallahassee Area, Florida – Gadsden, Jefferson, Leon, and Wakulla counties, all in Florida.						
BB&T Pre-Consummation	7	$497.5M	6.3			
SunTrust	2	$1.2B	15.1			
BB&T Post-Consummation	1	$1.7B	21.4	1227	191	16
Tampa Bay Area, Florida – Hernando, Hillsborough, Pinellas, and Pasco counties, all in Florida.						
BB&T Pre-Consummation	8	$2.6B	3.1			
SunTrust	4	$9.9B	11.8			
BB&T Post-Consummation	3	$12.5B	14.9	1267	73	53

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Appendix II—*continued*

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
West Palm Beach Area, Florida – Palm Beach County east of Loxahatchee; and the towns of Indiantown and Hobe Sound in Martin County, all in Florida.						
BB&T Pre-Consummation	8	$1.7B	3.4			
SunTrust	6	$2.8B	5.4			
BB&T Post-Consummation	4	$4.5B	8.8	1025	37	50
Athens Area, Georgia – Barrow (less the cities of Auburn and Winder), Clarke, Jackson, Madison, Oconee, and Oglethorpe counties, all in Georgia.						
BB&T Pre-Consummation	13	$174.1M	2.8			
SunTrust	1	$1.1B	18.6			
BB&T Post-Consummation	1	$1.3B	21.4	1112	106	20
Brunswick Area, Georgia – Brantley, Glynn and McIntosh counties, all in Georgia.						
BB&T Pre-Consummation	5	$201.1M	9.6			
SunTrust	1	$277.5M	13.2			
BB&T Post-Consummation	1	$478.6M	22.8	1186	252	13
Carrollton Area, Georgia – Carroll and Haralson counties, both in Georgia; and the town of Ranburne in Cleburne County, Alabama.						
BB&T Pre-Consummation	3	$381.2M	12.7			
SunTrust	6	$131.0M	4.4			
BB&T Post-Consummation	2	$512.2M	17.1	2647	111	11
Columbus Area, Georgia – Chattahoochee, Harris, and Muscogee counties; the towns of Junction City, Geneva, and Box Springs in Talbot County, all in Georgia; Russell County, Alabama; and the portion of Lee County, Alabama, that is within 12 road miles of Phenix City, Alabama, or Columbus, Georgia.						
BB&T Pre-Consummation	7	$140.3M	1.7			
SunTrust	2	$916.2M	10.9			
BB&T Post-Consummation	2	$1.0B	12.6	4791	36	14
Dalton, Georgia – Murray and Whitfield counties, both in Georgia.						
BB&T Pre-Consummation	1	$484.6M	18			
SunTrust	10	$25.3M	0.9			
BB&T Post-Consummation	1	$509.9M	18.9	1295	33	11
Douglas Area, Georgia – Atkinson and Coffee counties, both in Georgia.						
BB&T Pre-Consummation	10	$22.7M	2.8			
SunTrust	5	$80.3M	9.9			
BB&T Post-Consummation	5	$103.0M	12.7	1351	56	9
Greensboro Area, Georgia – Greene and Taliaferro counties; and the Eatonton and Phoenix Census County Divisions in Putnam County, all in Georgia.						
BB&T Pre-Consummation	6	$50.9M	6.9			
SunTrust	5	$51.5M	7			
BB&T Post-Consummation	4	$101.6M	13.9	1924	97	9
LaGrange Area, Georgia–Alabama – Troup County, Georgia; and Chambers County, Alabama.						
BB&T Pre-Consummation	8	$85.9M	5.8			
SunTrust	9	$79.3M	5.4			
BB&T Post-Consummation	3	$165.2M	11.2	1269	62	12
Macon, Georgia – Bibb, Crawford, Houston, Jones, Macon, Peach, and Twiggs counties; and Allentown and Nicklesville in Wilkinson County, all in Georgia.						
BB&T Pre-Consummation	4	$605.3M	11			
SunTrust	2	$781.2M	14.2			
BB&T Post-Consummation	2	$1.4B	25.2	1661	311	23

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Appendix II—*continued*

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Savannah Area, Georgia – Bryan, Chatham, and Effingham counties; and the Midway CCD in Liberty County, all in Georgia.						
BB&T Pre-Consummation	6	$468.0M	6.6			
SunTrust	1	$1.6B	22.6			
BB&T Post-Consummation	1	$2.1B	29.3	1588	300	20
Tift County, Georgia – Tift County; and the Lenox CCD in Cook County, both in Georgia.						
BB&T Pre-Consummation	4	$100.2M	10.4			
SunTrust	5	$49.7M	5.2			
BB&T Post-Consummation	4	$149.9M	15.6	2396	107	8
Valdosta Area, Georgia – Echols, Lanier, and Lowndes counties; and the Adel-Sparks CCD in Cook County, all in Georgia.						
BB&T Pre-Consummation	14	$45.5M	2.2			
SunTrust	16	$30.2M	1.4			
BB&T Post-Consummation	11	$75.7M	3.6	954	6	18
Waycross Area, Georgia – Pierce and Ware counties, both in Georgia.						
BB&T Pre-Consummation	7	$54.0M	5.7			
SunTrust	6	$70.7M	7.4			
BB&T Post-Consummation	4	$124.7M	13.1	1904	85	7
Annapolis, Maryland – Anne Arundel County (excluding District 7) and Queen Anne's County, both in Maryland.						
BB&T Pre-Consummation	3	$1.2B	10			
SunTrust	6	$824.6M	7			
BB&T Post-Consummation	3	$2.0B	17	1235	140	28
Baltimore, Maryland – Baltimore City and Baltimore, Carroll, Harford, and Howard (excluding the Clarksville and Savage districts) counties, all in Maryland.						
BB&T Pre-Consummation	5	$3.8B	7			
SunTrust	6	$1.8B	3.2			
BB&T Post-Consummation	5	$5.6B	10.3	1810	45	42
Easton, Maryland – Talbot County, Maryland.						
BB&T Pre-Consummation	5	$80.3M	6.2			
SunTrust	6	$61.4M	4.7			
BB&T Post-Consummation	4	$141.7M	10.9	2234	58	9
Salisbury, Maryland–Delaware – Wicomico County, Maryland.						
BB&T Pre-Consummation	7	$117.8M	6.5			
SunTrust	10	$49.5M	2.7			
BB&T Post-Consummation	7	$167.3M	9.2	1316	35	10
Saint Mary's, Maryland – Saint Mary's County, Maryland.						
BB&T Pre-Consummation	5	$104.6M	7.4			
SunTrust	6	$104.0M	7.3			
BB&T Post-Consummation	4	$208.9M	14.7	2167	108	7
Worcester, Maryland – Worcester County, Maryland.						
BB&T Pre-Consummation	4	$185.8M	11.5			
SunTrust	7	$57.6M	3.6			
BB&T Post-Consummation	4	$243.4M	15.1	1658	83	11

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Appendix II—*continued*

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Asheville, North Carolina – Buncombe, Henderson, Haywood, and Madison counties, all in North Carolina.						
BB&T Pre-Consummation	8	$551.3M	7			
SunTrust	7	$642.6M	8.1			
BB&T Post-Consummation	3	$1.2B	15.1	1313	113	19
Burlington, North Carolina – Alamance and Caswell counties (excluding the Dan River, Milton, Pelham, and Yanceyville townships), both in North Carolina.						
BB&T Pre-Consummation	4	$245.4M	11.7			
SunTrust	5	$235.8M	11.3			
BB&T Post-Consummation	2	$481.2M	23	1580	265	15
Charlotte, North Carolina – Anson, Cabarrus, Gaston, Lincoln, Mecklenburg, and Union counties; the city of Mooresville and the townships of Davidson and Coddle Creek in Iredell County; the townships of Atwell and China Grove in Rowan County; the King's Mountain township in Cleveland County, all in North Carolina; and Lancaster and York counties, both in South Carolina.						
BB&T Pre-Consummation	3	$6.0B	2.8			
SunTrust	6	$1.8B	0.8			
BB&T Post-Consummation	3	$7.8B	3.6	5885	4	41
Greensboro–High Point, North Carolina – Davidson, Guilford, Randolph, and Rockingham counties, all in North Carolina.						
BB&T Pre-Consummation	1	$3.0B	20.8			
SunTrust	6	$791.0M	5.4			
BB&T Post-Consummation	1	$3.8B	26.2	1478	227	21
Hickory, North Carolina – Alexander, Burke, Caldwell, and Catawba counties, all in North Carolina.						
BB&T Pre-Consummation	2	$1.1B	20.6			
SunTrust	6	$175.2M	3.4			
BB&T Post-Consummation	2	$1.2B	24	1776	140	15
Raleigh, North Carolina – Franklin, Granville, Johnston, Wake, and Harnett (excluding the Anderson Creek, Barbeque, Johnsonville, and Stewarts Creek townships in Harnett County) counties, all in North Carolina.						
BB&T Pre-Consummation	2	$4.6B	16			
SunTrust	6	$1.5B	5.1			
BB&T Post-Consummation	2	$6.1B	21.1	1480	165	36
Salisbury, North Carolina – Rowan County (excluding the townships of Atwell and China Grove), in North Carolina.						
BB&T Pre-Consummation	6	$55.7M	4.7			
SunTrust	3	$153.2M	12.9			
BB&T Post-Consummation	3	$208.9M	17.6	1904	121	11
Wilmington, North Carolina – New Hanover, Pender, and Brunswick (excluding the Shallotte Township in Brunswick County) counties, all in North Carolina.						
BB&T Pre-Consummation	2	$1.5B	16.4			
SunTrust	9	$290.8M	3.1			
BB&T Post-Consummation	2	$1.8B	19.5	1780	103	21
Charleston, South Carolina –Berkeley, Charleston, and Dorchester counties; the southeastern portion of Colleton County, located east of the South Edisto River on Edisto Island, all in South Carolina.						
BB&T Pre-Consummation	5	$916.6M	6.6			
SunTrust	9	$501.2M	3.6			
BB&T Post-Consummation	4	$1.4B	10.2	1205	48	34
Greenville, South Carolina –Anderson, Greenville, Laurens, and Pickens counties, all in South Carolina.						
BB&T Pre-Consummation	3	$1.8B	10.8			
SunTrust	6	$1.1B	6.4			
BB&T Post-Consummation	2	$2.9B	17.2	1036	138	34

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Appendix II—*continued*

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Hilton Head Island, South Carolina – Beaufort, Hampton, and Jasper counties, all in South Carolina.						
BB&T Pre-Consummation	7	$342.5M	7.1			
SunTrust	8	$321.1M	6.7			
BB&T Post-Consummation	3	$663.6M	13.8	1032	96	19
Oconee County, South Carolina – Oconee County, South Carolina.						
BB&T Pre-Consummation	6	$77.6M	7			
SunTrust	8	$61.7M	5.6			
BB&T Post-Consummation	4	$139.3M	12.6	1344	79	10
Spartanburg, South Carolina – Cherokee, Spartanburg, and Union counties, all in South Carolina; and Polk County, North Carolina.						
BB&T Pre-Consummation	2	$739.0M	12.1			
SunTrust	1	$973.3M	15.9			
BB&T Post-Consummation	1	$1.7B	28	1291	383	20
Cleveland, Tennessee – Bradley County and the towns of Benton and Ocoee in Polk County, all in Tennessee.						
BB&T Pre-Consummation	6	$169.7M	9.3			
SunTrust	2	$230.1M	12.7			
BB&T Post-Consummation	1	$399.8M	22	1288	236	15
Chattanooga, Tennessee – Hamilton County; Marion County (minus the town of Monteagle), both in Tennessee; and Catoosa, Dade, and Walker counties, all in Georgia.						
BB&T Pre-Consummation	14	$123.2M	1.3			
SunTrust	2	$1.6B	17.4			
BB&T Post-Consummation	2	$1.7B	18.7	1328	45	26
Johnson City–Bristol Area, Tennessee–Virginia – Carter, Hawkins, Sullivan, Unicoi, and Washington counties, all in Tennessee; the independent city of Bristol; Scott County; and the Tyler and Wilson county subdivisions in Washington County, all in Virginia.						
BB&T Pre-Consummation	5	$533.5M	8.3			
SunTrust	6	$450.0M	7			
BB&T Post-Consummation	2	$983.5M	15.3	1129	117	30
Knoxville Area, Tennessee – Anderson, Blount, Knox, Loudon, Morgan, Roane, and Union counties; Grainger County excluding District 5 in eastern Grainger County; Jefferson County excluding Districts 3, 8, and 9 in northern and eastern Jefferson County; and Districts 6 and 9 in western Sevier County, all in Tennessee.						
BB&T Pre-Consummation	5	$1.1B	7			
SunTrust	2	$2.5B	15.3			
BB&T Post-Consummation	1	$3.6B	22.3	1183	213	41
Nashville, Tennessee – Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, and Wilson counties, all in Tennessee.						
BB&T Pre-Consummation	14	$715.3M	1.2			
SunTrust	4	$6.4B	11			
BB&T Post-Consummation	4	$7.1B	12.2	926	27	63
Sevierville Area, Tennessee – Cocke County, District 8 in eastern Jefferson County, and Sevier County excluding Districts 6 and 9 in western Sevier County, all in Tennessee.						
BB&T Pre-Consummation	7	$131.1M	4.8			
SunTrust	10	$90.1M	3.3			
BB&T Post-Consummation	5	$221.2M	8.1	1555	32	12
Blacksburg, Virginia – The independent city of Radford and Floyd, Giles, Montgomery, and Pulaski counties, all in Virginia.						
BB&T Pre-Consummation	4	$301.6M	9.1			
SunTrust	6	$212.0M	6.4			
BB&T Post-Consummation	3	$513.6M	15.5	1532	117	13

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Appendix II—*continued*

BB&T/SunTrust Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines—*continued*

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Charlottesville, Virginia – The independent city of Charlottesville; Albemarle, Buckingham, Fluvanna, Greene, Madison and Nelson counties; Districts 1, 2, and 3 in Orange County; and the Green Spring, Louisa, and Patrick Henry districts in Louisa County, all in Virginia.						
BB&T Pre-Consummation	3	$854.9M	14.6			
SunTrust	5	$606.6M	10.4			
BB&T Post-Consummation	1	$1.4B	25	1683	303	20
Fredericksburg, Virginia – The independent city of Fredericksburg; Caroline, King George, and Spotsylvania counties; Districts 4 and 5 in Orange County; and the Washington District in Westmoreland County, all in Virginia.						
BB&T Pre-Consummation	2	$633.0M	18.1			
SunTrust	7	$155.6M	4.4			
BB&T Post-Consummation	2	$788.6M	22.5	1975	161	15
Harrisonburg, Virginia–West Virginia – The independent city of Harrisonburg; Rockingham and Page counties, all in Virginia; and Pendleton County, West Virginia.						
BB&T Pre-Consummation	1	$488.1M	16.6			
SunTrust	7	$181.4M	6.2			
BB&T Post-Consummation	1	$669.5M	22.8	1202	206	17
Lynchburg, Virginia – The independent city of Lynchburg; Amherst, Appomattox, and Campbell counties; and the portion of Bedford County east of Route 43 (excluding the independent city of Bedford, VA), all in Virginia.						
BB&T Pre-Consummation	2	$852.9M	19.1			
SunTrust	4	$472.5M	10.6			
BB&T Post-Consummation	1	$1.3B	29.7	1771	407	16
Newport News–Hampton, Virginia – The cities of Hampton, Newport News, Poquoson, and Williamsburg and Gloucester, Isle of Wight (excluding the Carrsville District), James City, Mathews, and York counties, all in Virginia..						
BB&T Pre-Consummation	5	$913.1M	12.4			
SunTrust	1	$1.3B	17.1			
BB&T Post-Consummation	1	$2.2B	29.5	1633	424	16
Roanoke, Virginia – The independent cities of Bedford, Roanoke, and Salem; Botetourt, Craig, Franklin, and Roanoke counties; and the portion of Bedford County west of Route 43, all in Virginia.						
BB&T Pre-Consummation	3	$879.3M	11.3			
SunTrust	2	$1.4B	18.6			
BB&T Post-Consummation	1	$2.3B	29.9	1757	421	18
Staunton, Virginia – The independent cities of Staunton and Waynesboro and Augusta and Highland counties, all in Virginia.						
BB&T Pre-Consummation	3	$216.8M	12.7			
SunTrust	5	$116.8M	6.8			
BB&T Post-Consummation	2	$333.6M	19.5	1399	172	14
Winchester, Virginia–West Virginia – The independent city of Winchester; Clarke, Frederick, and Shenandoah, counties, all in Virginia; Hampshire County and the District 1 subdivision in Morgan County, both in West Virginia.						
BB&T Pre-Consummation	1	$1.0B	26.9			
SunTrust	9	$131.7M	3.5			
BB&T Post-Consummation	1	$1.1B	30.4	1571	189	15

Data are as of June 30, 2018. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.

First Citizens BancShares, Inc.
Raleigh, North Carolina

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2019-17 (December 16, 2019)

First Citizens BancShares, Inc. ("First Citizens"), Raleigh, North Carolina, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to acquire all the voting shares of Entegra Financial Corp. ("Entegra") and thereby indirectly acquire Entegra's state nonmember bank subsidiary, Entegra Bank, both of Franklin, North Carolina. Following the proposed acquisition, Entegra Bank would be merged into First Citizens' state nonmember bank subsidiary, First-Citizens Bank & Trust Company ("First Citizens Bank"), Raleigh, North Carolina.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 32,745 (July 9, 2019)).[4] The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

First Citizens, which is part of the Holding F&L Family Chain,[5] has consolidated assets of approximately $37.8 billion and is the 61st largest insured depository organization in the United States, controlling approximately $32.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[6] First Citizens controls First Citizens Bank, which operates in Arizona, California, Colorado, Florida, Georgia, Kansas, Maryland, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. First Citizens Bank is the 19th largest insured depository institution in Georgia, controlling deposits of approximately $1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Similarly, First Citizens Bank is the fourth largest insured depository institution in North Carolina, controlling deposits of approximately $15.8 billion, which represent 4.3 percent of the total deposits of insured depository institutions in that state.[7] First Citizens Bank also is the fourth largest insured depository institution in South Carolina, controlling deposits of approximately $7.5 billion, which represent 8.9 percent of the total deposits of insured depository institutions in that state.

Entegra, with consolidated assets of approximately $1.7 billion, is the 495th largest insured depository organization in the United States, controlling approximately $1.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Entegra Bank operates in Georgia, North Carolina, and South Carolina. Entegra Bank is the 55th largest insured depository institution in Georgia, controlling deposits of approximately $307.2 million, which repre-

1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 The merger of Entegra Bank into First Citizens Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

4 12 CFR 262.3(b).

5 In addition to First Citizens, the Holding F&L Family Chain controls two other bank holding companies, Southern BancShares (N.C.), Inc., Mount Olive, and Fidelity BancShares (N.C.), Inc., Fuquay-Varina, both of North Carolina.

6 Asset data are as of June 30, 2019, and deposit data are as of June 30, 2018, unless otherwise noted.

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

sent less than 1 percent of the total deposits of insured depository institutions in that state. Entegra Bank is the 25th largest insured depository institution in North Carolina, controlling deposits of approximately $829.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. Entegra Bank also is the 54th largest insured depository institution in South Carolina, controlling deposits of approximately $87.2 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, First Citizens would become the 60th largest insured depository organization in the United States, with consolidated assets of approximately $39.3 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. First Citizens would control total consolidated deposits of approximately $34.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, First Citizens would remain the 19th largest insured depository organization, controlling deposits of approximately $1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the state. In North Carolina, First Citizens would remain the fourth largest insured depository organization, controlling deposits of approximately $16.6 billion, which represent 4.6 percent of the total deposits of insured depository institutions in the state. In South Carolina, First Citizens would remain the fourth largest insured depository organization, controlling deposits of approximately $7.6 billion, which represent 9.0 percent of the total deposits of insured depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction would be prohibited under state law.[8] Section 3(d) also provides that the Board (1) may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years;[9] (2) must take into account the record of the applicant under the Community Reinvestment Act of 1977 ("CRA")[10] and the applicant's record of compliance with applicable state community reinvestment laws;[11] and (3) may not approve an application pursuant to section 3(d) if the bank holding company or resulting bank, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States[12] or, in certain circumstances, if the bank holding company or resulting bank, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[13]

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8 12 U.S.C. § 1842(d)(1)(A).

9 12 U.S.C. § 1842(d)(1)(B).

10 12 U.S.C. § 2901 *et seq.*

11 12 U.S.C. § 1842(d)(3).

12 12 U.S.C. § 1842(d)(2)(A).

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

For purposes of the BHC Act, the home state of First Citizens is North Carolina.[14] Entegra is located in Georgia, North Carolina, and South Carolina. First Citizens is well capitalized and well managed under applicable law and has a satisfactory rating under the CRA. Georgia has an age requirement that applies to First Citizens' acquisition of Entegra.[15] South Carolina does not have a minimum age requirement. Entegra Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Citizens would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. South Carolina and Georgia each impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.[16] First Citizens would control less than 1 percent of the total deposits of insured depository institutions in Georgia and 9.0 percent of the total deposits of insured depository institutions in South Carolina.

The Board has considered all other requirements under section 3(d) of the BHC Act. Accordingly, in light of all the facts of record, the Board determines that it is not prohibited by section 3(d) from approving the proposal.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[17] 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.[18]

First Citizens and Entegra have subsidiary banks that compete directly in eight banking markets in Georgia, North Carolina, and South Carolina. The Board has considered the competitive effects of the proposal in these banking markets. In particular, the Board has considered the relative share of total deposits in insured depository institutions in each market ("market deposits") that First Citizens would control;[19] the concentration level of market deposits and the increase in this level, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[20] the number of competitors that would remain in each market; and other characteristics of each market.

[14] *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 each company were the largest onJuly 1, 1966, or the date on which the company became a bank holding company, whichever is later.

[15] Ga. Code Ann. § 7-1-628.8 (3 years).

[16] Ga. Code Ann. § 7-1-622(b) and S.C. Code Ann. § 34-25-50. North Carolina does not impose a limit on the total amount of deposits an insured depository institution may control.

[17] 12 U.S.C. § 1842(c)(1)(A).

[18] 12 U.S.C. § 1842(c)(1)(B).

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

[20] Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The DOJ has informed the Board that a bank merger or acquisi-

Banking Markets within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in four banking markets. On consummation, two banking markets would remain moderately concentrated, and two banking markets would remain unconcentrated, as measured by the HHI. The change in the HHI in these markets would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in most of these banking markets.[21]

Banking Markets Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Cherokee, Transylvania County, Jackson, and Macon County banking markets, all in North Carolina, warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines and would result in the market deposit share of First Citizens, its affiliates, and Entegra Bank equaling or exceeding 35 percent when using initial competitive screening data.

Markets without Divestitures

Cherokee, North Carolina, Banking Market. First Citizens Bank is the second largest depository institution in the Cherokee banking market, controlling approximately $133.1 million in deposits, which represent 21.1 percent of market deposits.[22] Entegra Bank is the fourth largest depository institution in the market, controlling approximately $59.7 million in deposits, which represent 9.5 percent of market deposits. On consummation of the proposal, First Citizens Bank would remain the second largest depository institution in the Cherokee banking market, controlling approximately $192.8 million in deposits, which would represent approximately 30.6 percent of market deposits. The HHI in this market would increase 400 points, from 2369 to 2769.

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 Cherokee banking market. In particular, the Board has considered that the market has a large and active credit union that offers a full range of retail banking products. North Carolina's State Employee's Credit Union ("SECU") is the second largest credit union in the United States, and approximately 21 percent of market residents in the Cherokee banking market are members of the SECU. In addition, the SECU operates street-level branches that are easily accessible to residents in the market. SECU controls approximately $166 million in deposits in the Cherokee banking market. The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal. In addition, another credit union in the Cherokee banking market, which offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the

tion generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

21 These banking markets and the competitive effects of the proposal in these markets are described in the Appendix.

22 The Cherokee banking market is defined as Cherokee and Clay counties, both in North Carolina.

residents in the relevant banking market, exerts a competitive influence in the market.[23] The Board finds that the deposits of these credit unions should be included at a 50-percent weight in calculating their estimated market influence. This weighting takes into account the limited lending done by credit unions to small businesses relative to commercial banks' lending levels.

After weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 26.7 percent of market deposits, and the HHI would increase by 304 points to a level of 2237. In addition to First Citizens Bank, six other depository institutions, including the credit unions, compete in the Cherokee market, including one competitor with more than 35 percent of market deposits. The presence of these market competitors suggests that First Citizens Bank would have limited ability unilaterally to offer less attractive terms to consumers, and these depository institutions would be able to exert competitive pressure on First Citizens Bank in the Cherokee banking market.

Transylvania County, North Carolina, Banking Market. First Citizens Bank is the largest depository institution in the Transylvania County banking market, controlling approximately $138.4 million in deposits, which represent 26.2 percent of market deposits.[24] Entegra Bank is the fourth largest depository institution in the market, controlling approximately $59.6 million in deposits, which represent 11.3 percent of market deposits. On consummation of the proposal, First Citizens Bank would remain the largest depository institution in the Transylvania County banking market, controlling approximately $198.0 million in deposits, which would represent approximately 37.4 percent of market deposits. The HHI in this market would increase 589 points, from 1812 to 2401.

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 Transylvania County banking market. In particular, the Board has considered that the SECU is a large and active credit union in the market that offers a full range of retail banking products. Approximately 12 percent of market residents in the Transylvania County banking market are members of the SECU. In addition, the SECU operates street-level branches that are easily accessible to residents in the market. SECU controls approximately $121 million in deposits in the Transylvania County banking market. The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal. In addition, three other credit unions in the Transylvania County banking market, which offer a wide range of consumer banking products, operate street-level branches, and have broad membership criteria that include almost all of the residents in the relevant banking market, exert a competitive influence in the market. The Board finds that the deposits of these credit unions should be included at a 50-percent weight in calculating their estimated market influence.

After weighting the deposits of the credit unions at 50 percent, the combined organization would control approximately 30.2 percent of market deposits, and the HHI would increase by 385 points to a level of 1692. In addition to First Citizens Bank, nine other depository institutions, including the credit unions, would compete in the Transylvania

[23] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Huntington Bancshares Incorporated*, FRB Order No. 2016-13 (July 29, 2016); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

[24] The Transylvania County banking market is defined as Transylvania County, North Carolina.

County banking market, including two competitors with more than 16 percent of market deposits.

Markets with Divestitures

Jackson, North Carolina, Banking Market. First Citizens Bank is the largest depository institution in the Jackson banking market, controlling approximately $419.3 million in deposits, which represent 41.3 percent of market deposits.[25] Entegra Bank is the fourth largest depository institution in the market, controlling approximately $120.0 million in deposits, which represent 11.8 percent of market deposits. On consummation of the proposal, First Citizens Bank would remain the largest depository institution in the Jackson banking market, controlling approximately $539.4 million in deposits, which would represent approximately 53.1 percent of market deposits. The HHI in this market would increase 978 points, from 2929 to 3907.

To mitigate the potentially adverse competitive effects of the proposal in the Jackson banking market, First Citizens has committed to divest one branch, accounting for a total of approximately $63.6 million in deposits, to a competitively suitable institution.[26] Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Jackson banking market. In particular, the Board has considered that the SECU is a large and active credit union in the market that offers a full range of retail banking products. Approximately 28 percent of market residents in the Jackson banking market are members of the SECU. In addition, the SECU operates street-level branches that are easily accessible to residents in the market. SECU controls approximately $386 million in deposits in the Jackson banking market. The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal. In addition, another credit union in the Jackson banking market, which 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 relevant banking market, exerts a competitive influence in the market. The Board finds that the deposits of these credit unions should be included at a 50-percent weight in calculating their estimated market influence.

First Citizens also argues that certain of its deposits in the Jackson banking market distort the measure of the competitive effects of the proposal in the market because the deposits cannot be used for lending. In conducting its competitive analysis in previous cases, the Board generally has not adjusted its market share calculations to exclude categories of deposits because all deposits are typically available to support lending and other banking activities at any location, and the deposits maintained in a specific market represent a firm's ability to compete in that market. The Board, however, has adjusted market deposits to exclude specific types of out-of-market deposits held by an acquirer in rare situations when evidence supports a finding that the out-of-market deposits are subject to legal or other restrictions that constrain an organization's ability to use those deposits to support

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[25] The Jackson banking market is defined as Jackson, Swain, and Graham counties, all in North Carolina.

[26] As a condition of consummation of the proposed merger, First Citizens has committed that it will execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. First Citizens has provided a similar commitment to the DOJ. First Citizens also has committed to complete the divestiture within 180 days after consummation of the proposed transaction. In addition, First Citizens has committed that if the proposed divestiture is not completed within the 180-day period, First Citizens would transfer the unsold branches to an independent trustee, who would be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. *See, e.g., BankAmerica Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

its general banking activities and that there are data available to make comparable adjustments to the market shares of other participants, if appropriate.[27] In this case, First Citizens has some tribal deposits in the market that are subject to legal or other restrictions on the organization's ability to lend on such deposits.[28]

After making these adjustments, accounting for the divestiture of the branch, and weighting the deposits of credit unions at 50 percent, the combined organization would control approximately 26.8 percent of market deposits, and the HHI would increase by 166 points to a level of 2170. In addition to First Citizens Bank, six other depository institutions, including the credit unions, would compete in the Jackson market, including one competitor with more than 30 percent of market deposits.

Macon County, North Carolina, Banking Market. First Citizens Bank is the third largest depository institution in the Macon County banking market, controlling approximately $102.1 million in deposits, which represent 8.4 percent of market deposits.[29] Entegra Bank is the second largest depository institution in the market, controlling approximately $334.5 million in deposits, which represent 27.5 percent of market deposits. On consummation of the proposal, First Citizens Bank would become the second largest depository institution in the Macon County banking market, controlling approximately $436.6 million in deposits, which would represent approximately 35.8 percent of market deposits. The HHI in this market would increase 460 points, from 3110 to 3570.

To mitigate the potentially adverse competitive effects of the proposal in the Macon County banking market, First Citizens has committed to divest two branches, accounting for a total of approximately $115.7 million in deposits, to a competitively suitable institution. Other factors also mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Macon County banking market. In particular, the Board has considered that the SECU is a large and active credit union in the market that offers a full range of retail banking products. Approximately 21 percent of market residents in the Macon County banking market are members of the SECU. In addition, the SECU operates street-level branches that are easily accessible to residents in the market. SECU controls approximately $133 million in deposits in the Macon County banking market. The Board concludes that this credit union exerts a competitive influence that mitigates, in part, the potential anticompetitive effects of the proposal. The Board finds that the deposits of this credit union should be included at a 50-percent weight in calculating its estimated market influence.

After accounting for the divestiture of the two branches and weighting the deposits of the credit union at 50 percent, the combined organization would control approximately 26.1 percent of market deposits, and the HHI would decrease by 39 points to a level of 3021.[30] In addition to First Citizens Bank, two other depository institutions, including the SECU, would compete in the Macon County market, both with more than 18 percent of market deposits.

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[27] *See Central Bancompany, Inc.*, FRB Order No. 2017-03, 5–6 (February 8, 2017); *Huntington Bancshares Incorporated*, FRB Order No. 2016-13, 12–15 (July 29, 2016). In this case, no other competitor in the market has a branch of such a size that comparable adjustments are appropriate.

[28] N.C. Gen. Stat. § 53C-6-3.

[29] The Macon County banking market is defined as Macon County, North Carolina.

[30] The HHI decrease in the Macon County banking market is attributable to the divestiture of the deposits at the two Entegra Bank branches in the market, which exceed the amount of deposits held by First Citizens in the Macon County banking market.

Conclusion Regarding Competitive Effects

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal with the proposed divestitures of branches in the banking markets, as discussed above, would not likely have a significantly adverse effect on competition in those markets 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 all of the facts of record, including the proposed divestitures, and for the reasons explained above, 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 banking markets in which First Citizens and Entegra compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.[31] 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, if applicable. In this evaluation, the Board considers a variety of 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.

First Citizens, Entegra, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.[32] The asset quality, earnings, and liquidity of First Citizens are consistent with approval, and First Citizens 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.

[31] 12 U.S.C. § 1842(c)(2), (5), and (6).

[32] To effect the merger, First Citizens Bank formed a wholly owned subsidiary, FC Merger Subsidiary VII, Inc. ("Merger Sub"), for the sole purpose of facilitating the transaction. Merger Sub would merge with Entegra, with Entegra as the surviving entity. As a result, First Citizens Bank would become a bank holding company for a moment in time before Entegra Bank is merged with and into First Citizens Bank.

At the effective time of the merger of Merger Sub with Entegra, each share of Entegra common stock would be converted into a right to receive cash. Immediately thereafter, Entegra would merge with First Citizens, with First Citizens as the surviving entity. Entegra Bank would then merge with and into First Citizens Bank, with First Citizens Bank as the surviving entity. First Citizens 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 First Citizens, Entegra, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Citizens; 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.

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

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

Based on all of the facts of record, including First Citizens' supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the record of effectiveness of First Citizens and Entegra 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.[33] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[34] 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.[35]

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

[33] 12 U.S.C. § 1842(c)(2).
[34] 12 U.S.C. § 2901(b).
[35] 12 U.S.C. § 2903.

teristics. The Board also considers 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 after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of First Citizens Bank and Entegra Bank; the consumer compliance, including fair lending, records of both banks; the supervisory views of the FDIC; confidential supervisory information; and information provided by First Citizens.

Records of Performance under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors. In this case, the Board considered the supervisory views of and information provided by the FDIC.[36]

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

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as First Citizens Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,[38] 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;[39] (4) the institution's community development lending, including the number and amounts of community development loans and their

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

[37] 12 U.S.C. § 2906.

[38] 12 U.S.C. § 2801 *et seq*.

[39] 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).

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.[40] The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.[41]

To evaluate the performance of an intermediate small bank, such as Entegra Bank, federal financial supervisors apply the Lending Test and a community development test ("Community Development Test"). The Community Development Test evaluates the number and amounts of an institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness to community development lending, investment, and service needs.[42]

CRA Performance of First Citizens Bank

First Citizens Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 6, 2016 ("First Citizens Bank Evaluation").[43] First Citizens Bank received a "High Satisfactory" rating for each of the Lending, Investment, and Service Tests.

Examiners found that First Citizens Bank's lending levels reflected good responsiveness to community credit needs. Examiners noted that the bank's geographic distribution of loans reflected good penetration throughout the bank's AAs. Examiners found that the bank's lending to borrowers reflected a good distribution among businesses of different sizes, as well as a good distribution among retail customers of different incomes. Examiners noted that the bank used flexible lending practices in order to serve AA credit needs. In addition, examiners found that the bank originated a relatively high level of community development loans.

Examiners found that First Citizens Bank had a significant level of qualified community development investments and donations. Examiners noted that the bank exhibited good responsiveness to credit and community economic development needs. Examiners also noted that the bank occasionally used innovative and complex investments to support community development initiatives.

Examiners found that First Citizens Bank's delivery systems were accessible to essentially all of the bank's AAs. Examiners noted that the services and business hours offered by First Citizens Bank did not vary in a way that inconvenienced customers in its AAs, particularly LMI geographies or individuals. Examiners also noted that the bank provided

[40] *See* 12 CFR 228.22(b).

[41] *See* 12 CFR 228.21 *et seq*.

[42] 12 CFR 228.26(c).

[43] The First Citizens Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), community development loans, community development investments and services, and delivery systems for the bank's products and services from May 28, 2013, through June 6, 2016. The First Citizens Bank Evaluation covered First Citizens Bank's 74 AAs located in 16 states and five multistate metropolitan statistical areas ("MSAs"): Arizona; California; Colorado; Florida; Georgia; Maryland; New Mexico; North Carolina; Oklahoma; Oregon; South Carolina; Tennessee; Texas; Virginia; Washington; West Virginia; Augusta–Richmond County, Georgia–South Carolina, MSA; Charlotte–Concord–Gastonia, North Carolina–South Carolina, MSA; Kansas City, Missouri–Kansas, MSA; Myrtle Beach–Conway–North Myrtle Beach, South Carolina–North Carolina, MSA; Washington–Arlington–Alexandria, District of Columbia–Virginia–Maryland–West Virginia, MSA. The First Citizens Bank Evaluation included a full-scope review of 43 of these AAs, including all five multistate MSAs. A limited-scope review was conducted in the remaining 21 AAs.

a relatively high level of community development services: those that benefited organizations throughout its AAs, including organizations focused on economic development and revitalization; affordable housing; small business development; financial education; services for at-risk youth; and basic human needs for LMI individuals and areas.

CRA Performance of Entegra Bank

Entegra Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of January 9, 2017 ("Entegra Bank Evaluation").[44] Entegra Bank received "Satisfactory" ratings for both the Lending Test and the Community Development Test.

Examiners found that Entegra Bank's loan-to-deposit ratio was reasonable given the bank's size and financial condition as well as the credit needs of its AAs. Examiners noted that the bank made a majority of its small business loans, and a substantial majority of its home mortgage loans, in its AAs. Examiners found that the geographic distribution of the loans reflected an excellent dispersion throughout the AAs and that the distribution of borrowers reflected a reasonable penetration of loans among businesses of different sizes and retail customers of different income levels.

Examiners found that Entegra Bank demonstrated adequate responsiveness to the community development needs of its AAs through community development loans, qualified investments, and community development services. In particular, examiners noted that the levels of community development loans and qualified investments were higher than those from the previous evaluation period. Examiners observed that the bank's board members, officers, and employees were involved with various charitable groups and organizations throughout the 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. First Citizens represents that, following consummation of the proposal, existing customers of Entegra Bank would have access to a broader network of branches and ATMs. In addition, First Citizens represents that customers of Entegra Bank would have access to additional services, including personal, small business, and commercial property and casualty insurance; international banking; treasury services; wealth management; leasing services; and merchant services.

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 First Citizens, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board determines that the convenience and needs factor is consistent with approval.

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[44] The Entegra Bank Evaluation was conducted using the Interagency Intermediate Small Institution CRA Examination Procedures. Examiners reviewed home mortgage lending data, other CRA data (small loans to businesses and farms), and qualified investments from March 3, 2014, through January 9, 2017. The Entegra Bank Evaluation covered four AAs in North Carolina and South Carolina, and included full-scope reviews of the Asheville, North Carolina, MSA; Greenville–Anderson–Mauldin, South Carolina, MSA; and the Non-MSA area of North Carolina, including Cherokee, Jackson, Macon, Polk, and Transylvania counties. A limited-scope review was conducted in the Spartanburg, South Carolina, MSA.

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."[45]

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.[46] 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.[47]

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.[48]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in total assets and a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.[49] The pro forma organization would not have 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

[45] 12 U.S.C. § 1842(c)(7).

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

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

[48] *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.

[49] First Citizens and Entegra both offer a broad array of retail and commercial banking products and services. First Citizens 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.

banking or financial system. Based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

Conclusion

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

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

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

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

Ann E. Misback
Secretary of the Board

Appendix

First Citizens/Entegra Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines

Bank	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Atlanta, Georgia – Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Jasper, Newton, Paulding, Rockdale, and Walton counties; the towns of Auburn and Winder in Barrow County; and Luthersville in Meriwether County, all in Georgia.						
First Citizens Pre-Consummation	21	$750.7M	0.4			
Entegra	43	$143.1M	0.1			
First Citizens Post-Consummation	20	$893.9M	0.5	1547	0	85
Asheville, North Carolina –Buncombe, Henderson, Haywood, and Madison counties, all in North Carolina.						
First Citizens Pre-Consummation	2	$1.5B	19.2			
Entegra	11	$170.6M	2.2			
First Citizens Post-Consummation	1	$1.7B	21.4	1283	83	19
Greenville, South Carolina – Anderson, Greenville, Laurens, and Pickens counties, all in South Carolina.						
First Citizens Pre-Consummation	7	$915.0M	5.4			
Entegra	26	$44.9M	0.3			
First Citizens Post-Consummation	7	$959.9M	5.7	901	3	34
Spartanburg, South Carolina–North Carolina – Cherokee, Spartanburg, and Union counties, all in South Carolina; and Polk County, in North Carolina.						
First Citizens Pre-Consummation	3	$709.3M	11.6			
Entegra	15	$127.6M	2.1			
First Citizens Post-Consummation	2	$836.9M	13.7	956	48	21

Data are as of June 30, 2019. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent. The remaining number of competitors noted in each market includes thrift institutions.

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

Magnolia Banking Corporation
Magnolia, Arkansas

Farmers Bank & Trust Company
Magnolia, Arkansas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of a Branch
FRB Order No. 2019-15 (October 11, 2019)

Magnolia Banking Corporation ("Magnolia"), Magnolia, Arkansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with Prescott Bancshares, Inc. ("Prescott"), and thereby indirectly acquire Prescott's subsidiary bank, Bank of Prescott, both of Prescott, Arkansas. Farmers Bank & Trust Company ("Farmers Bank"), Magnolia, Arkansas, the state member bank subsidiary of Magnolia, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act")[3] to merge with Bank of Prescott, a state non-member bank, with Farmers Bank as the surviving entity. In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate a branch at the main office of Bank of Prescott.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 30715 (June 27, 2019)).[5] 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 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 proposal was requested from the United States Attorney General, and a copy of the request has been provided to the Federal Deposit Insurance Corporation ("FDIC").

Magnolia, with consolidated assets of approximately $1.6 billion, is the 508th largest insured depository organization in the United States, controlling deposits of approximately $907.2 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions[6] in the United States.[7] Magnolia controls Farmers Bank, which has offices in Arkansas and Texas. Farmers Bank is the 14th largest insured depository institution in Arkansas, with approximately $907.2 million in deposits, which represent 1.4 percent of the total amount of deposits of insured depository institutions in that state.[8]

Prescott, with consolidated assets of approximately $67.0 million, is the 4631th largest insured depository institution in the United States, controlling deposits of approximately

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1 12 U.S.C. § 1841 *et seq*.

2 12 U.S.C. § 1842.

3 12 U.S.C. § 1828(c).

4 12 U.S.C. § 321. The branch would be located at 103 East 2nd Street South, Prescott, Arkansas.

5 12 U.S.C. § 1828(c)(3); 12 CFR 262.3(b).

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

7 National asset data are as of June 30, 2019. National deposit, ranking, and market-share data are as of June 30, 2018, unless otherwise noted.

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

$58.6 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Prescott controls Bank of Prescott, which has offices only in Arkansas. Prescott is the 99th largest insured depository organization in Arkansas, with approximately $58.6 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

On consummation of the proposal, Magnolia would remain the 508th largest insured depository organization in the United States, with consolidated assets of approximately $1.7 billion. Magnolia would control approximately $965.8 million in deposits, representing less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Farmers Bank would remain the 14th largest insured depository institution in Arkansas, controlling deposits of approximately $965.8 million, which represent approximately 1.5 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.[9] Section 3 of the BHC Act and the Bank Merger Act 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.[10]

Farmers Bank and Bank of Prescott compete directly in the Hope, Arkansas, banking market ("Hope market").[11] The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the relative share of total deposits of insured depository institutions in the market ("market deposits") that Farmers Bank would control;[12] the concentration levels of market deposits and the increase in these levels, as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[13] the number of competitors that would remain in the market; and other characteristics of the market.

The competitive effects of the proposal in the Hope market would exceed the thresholds in the DOJ Bank Merger Guidelines when using initial competitive screening data. Farmers Bank is the largest competitor in the Hope market, controlling approximately

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

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

11 The Hope market is defined as Hempstead County (minus Mine Creek township) and Nevada County, both in Arkansas.

12 Local deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of commercially active thrift institutions are included at 100 percent and the deposits of other thrift institutions are included at 50 percent.

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

$117.6 million in deposits, which represent approximately 28.9 percent of market deposits. Bank of Prescott is the third largest depository institution in the Hope market, controlling approximately $58.6 million in deposits, which represent approximately 14.2 percent of market deposits. On consummation of the proposal, Farmers Bank would remain the largest depository institution in the Hope market, controlling approximately $176.2 million in deposits, which would represent approximately 42.6 percent of market deposits. The HHI in the market would increase by 804 points, from 1839 to 2643.

The Board has considered whether 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 Hope market.[14] Factors indicate that the increase in concentration in the Hope market, as measured by the HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, one credit union exerts a competitive influence in the Hope market. The institution 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 the credit union at a 50 percent weight in its calculation to estimate market influence. This weighting takes into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels. After weighting the deposits of the credit union at 50 percent, Farmers Bank, upon consummation, would control approximately 41.1 percent of market deposits, and the market concentration level in the Hope market measured by the HHI would increase by 762 points to 2512.

Although consummation of this proposal would eliminate one existing competitor, the Hope market would continue to be served by seven depository institutions, including the credit union noted above. Excluding Farmers Bank, these competitors would include a depository institution with more than 20 percent of market deposits and two depository institutions each with more than 10 percent of market deposits. The presence of these viable competitors suggests that Farmers Bank would have limited ability to offer less attractive terms to consumers unilaterally, and these competitors would be able to exert competitive pressure on Farmers Bank in the Hope market. Furthermore, the branch locations and commuting patterns of consumers within the market suggest that Farmers Bank and Bank of Prescott do not compete as closely with each other as they do with other competitors. These circumstances suggest that the analysis of market concentration overstates the likely effects of the proposal on competition.

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

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

[15] The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. *See, e.g., Central Bancompany, Inc.*, FRB Order No. 2017-03 (February 8, 2017); *KeyCorp*, FRB Order No. 2016-12 (July 12, 2016); *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals 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.[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, if applicable. In this evaluation, the Board considers a variety of 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.

Magnolia, Prescott, and their subsidiary depository institutions are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash exchange, with a subsequent merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of Magnolia and Farmers Bank are consistent with approval, and Magnolia 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 Magnolia, Prescott, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Magnolia and Farmers 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.

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

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

[16] 12 U.S.C. § 1842(c)(2), (5), and (6); 12 U.S.C. § 1828(c)(5).

[17] Magnolia would form a wholly owned subsidiary, PBI Acquisition, Inc. ("Merger Sub"), in order to facilitate the transaction. Merger Sub would be merged into Prescott, with Prescott as the surviving entity, after which Prescott would be merged into Magnolia, with Magnolia as the surviving entity. As part of the proposed transaction, each share of Prescott common stock would be converted into a right to receive cash. Magnolia has the financial resources to effect the transaction.

tion, Magnolia's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. Magnolia would retain the existing management of Prescott.

Based on all of the facts of record, including the supervisory records of Magnolia and Farmers Bank, their managerial and operational resources, and their plans for operating the combined organization 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 Magnolia and Prescott in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on proposals under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[18] In its evaluation, 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 Community Reinvestment Act ("CRA").[19] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[20] and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[21]

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

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Farmers Bank and Bank of Prescott; the consumer compliance, including fair lending, records of both banks; confidential supervisory information; and information provided by Magnolia and Farmers Bank.

Records of Performance under the CRA

In evaluating the CRA performance of the institutions involved, 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 St. Louis ("Reserve Bank")

[18] 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 1828(c)(5).

[19] 12 U.S.C. § 2901 *et seq.*

[20] 12 U.S.C. § 2901(b).

[21] 12 U.S.C. § 2903.

with respect to Farmers Bank and the FDIC with respect to Bank of Prescott. The Board also considers information provided by the applicant.[22]

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

In general, federal financial supervisors apply a lending test ("Lending Test"), and a community development test ("Community Development Test") to evaluate the performance of an intermediate small insured depository institution, such as Farmers Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act,[24] 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;[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] The Community Development Test evaluates the number and amounts of the institution's community development loans and qualified investments; the extent to which the institution provides community development services; and the institution's responsiveness to community development lending, investment, and service needs.[27] Small institutions, such as Bank of Prescott, are subject only to the Lending Test.

CRA Performance of Farmers Bank

Farmers Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Reserve Bank, as of January 23, 2017 ("Farmers Evalua-

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

[23] 12 U.S.C. § 2906.

[24] 12 U.S.C. § 2801 *et seq*.

[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 228.26(c).

tion").[28] Farmers Bank received a "Satisfactory" rating for each of the Lending Test and the Community Development Test.[29]

Examiners found Farmers Bank's loan-to-deposit ratio was more than reasonable given the bank's size, financial condition, and the credit needs of the bank's AAs. Examiners noted that the bank extended a majority of its loans within its AAs. Examiners found that the distribution of the bank's lending reflected reasonable penetration among individuals of different income levels and businesses of different sizes. In addition, examiners found that, overall, the bank's geographic distribution of loans was reasonable throughout the bank's AAs. Examiners noted no CRA-related complaints had been filed against Farmers Bank since its previous CRA evaluation.

Examiners found that Farmers Bank's overall community development performance demonstrated adequate responsiveness to the community development needs of its AAs, considering the bank's capacity and the availability of opportunities for development in the bank's AAs.

CRA Performance of Bank of Prescott

Bank of Prescott was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of April 2, 2018 ("Prescott Evaluation").[30] The bank received a "Satisfactory" rating for the Lending Test.[31]

Examiners found that Bank of Prescott exhibited a reasonable record regarding its loan-to-deposit ratio. Examiners found that the bank originated a majority of its loans within its AA and noted that the bank's overall geographic distribution of loans was reasonable. Examiners also noted that the bank's record regarding its borrower profile loan distribution was reasonable.

Additional Supervisory Views

In its review of the proposal, the Board consulted with the Reserve Bank regarding the CRA and consumer compliance, including fair lending, records of Farmers Bank and considered the FDIC's most recent CRA and consumer compliance evaluations of Bank of Prescott. 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 Farmers Bank has the experience and resources to ensure that the combined bank would help meet the credit needs of the communities within its AAs following consummation of the proposed transaction.

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[28] The Farmers Evaluation was conducted using Intermediate Small Institution CRA Examination Procedures. Examiners assessed the loan-to-deposit ratio for the period December 31, 2013, through September 30, 2016, and reviewed AA concentration, loan distribution by borrower profile, and the geographic distribution of loans from January 1, 2015, through December 31, 2015. Examiners reviewed community development activities from December 3, 2013, through January 23, 2017.

[29] The Farmers Evaluation included full-scope evaluations of the Texarkana Multistate Metropolitan Statistical Area ("MSA") AA; the Columbia-Hempstead-Lafayette-Ouachita counties, Arkansas AA; the Hot Spring County, Arkansas AA; the Saline County, Arkansas AA; and the Collin County, Texas AA.

[30] The Prescott Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed a random sample of small business loans for 2017 and loan-to-deposit data from June 30, 2012, to December 31, 2017.

[31] The Prescott Evaluation included a full-scope evaluation of the bank's sole AA, a Non-MSA AA, consisting of all of Clark County and contiguous census tracts in Hempstead County and Nevada County, all in Arkansas.

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. Magnolia represents that it does not anticipate making significant changes in or discontinuing any existing products or services of either Farmers Bank or Bank of Prescott following consummation of the bank merger. Magnolia also represents that customers of Bank of Prescott would gain access to a larger array of products and services and an expanded branch network.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

The BHC Act and the Bank Merger Act require the Board to consider the risk of the proposal "to the stability of the United States banking or financial system."[32]

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.[33] 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.[34]

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.[35]

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[32] 12 U.S.C. § 1842(c)(7); 12 U.S.C. § 1828(c)(5).

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

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

[35] *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. 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.[36] 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.

Establishment of Branches

Farmers Bank has applied under section 9 of the FRA to establish and operate a branch at the location of the current main office Bank of Prescott.[37] The Board has assessed the factors it is required to consider when reviewing an application under that section. Specifically, the Board has considered Farmers 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 applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Magnolia and Farmers Bank with all of the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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.

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[36] Farmers Bank and Bank of Prescott are predominately engaged in retail and commercial banking activities. Farmers Bank 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.

[37] *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, Farmers Bank's new branch would be permissible under applicable state law. *See* Ark. Code Ann. § 23-48-702.

[38] 12 U.S.C. § 322; 12 CFR 208.6. Upon consummation of the proposed transaction, Farmers Bank's investment in bank premises would remain within the legal requirements of 12 CFR 208.21.

By order of the Board of Governors, effective October 11, 2019.

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

Ann E. Misback
Secretary of the Board

Order Issued Under International Banking Act

Absa Bank Limited
Johannesburg, South Africa

Order Approving the Establishment of a Representative Office
FRB Order No. 2019-14 (October 1, 2019)

Absa Bank Limited ("Absa Bank"), Johannesburg, South Africa, a foreign bank within the meaning of the International Banking Act of 1978 ("IBA"), has applied under section 10(a) of the IBA[1] 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*, May 17, 2019). The time for submitting comments has expired, and the Board has considered all comments received.

Absa Bank, with total assets of approximately $81.8 billion, is the third largest bank in South Africa by asset size.[2] Absa Bank provides retail, business, corporate and investment banking, and wealth management products and services. The bank also has subsidiaries that engage in various activities, including information technology, automotive fleet management, and property development and investing. Foreign operations of the bank include representative offices located in Nigeria and Namibia.

Absa Bank is a wholly-owned subsidiary of Absa Group Limited ("AGL" – consolidated assets of $97.5 billion), Johannesburg, South Africa, a diversified financial services provider. In addition to Absa Bank, AGL has a majority stake in banks located in nine African countries and has subsidiaries that engage in insurance, property management, and asset management activities. AGL operates a broker dealer subsidiary in London, England, and is in the process of establishing a U.S. broker dealer subsidiary, Absa Securities U.S. Inc., New York, New York, that would engage in trading debt and equity securities.

AGL's largest shareholder is Barclays Bank PLC ("Barclays"), London, England, which controlled AGL until 2018 and currently owns approximately 14.9 percent of AGL's voting shares. The second largest shareholder, with 7.1 percent of AGL's voting shares, is South Africa's Public Investment Corporation, Pretoria, South Africa. The remaining shares of AGL are widely held.

The New York Representative Office would act as a liaison with U.S. clients and prospective clients of Absa Bank. The New York Representative Office also would market and solicit new business for banking products and services provided by Absa Bank, perform back-office functions, and assemble credit information.[3]

1 12 U.S.C. § 3107(a).

2 Asset data is as of June 30, 2019. Ranking data is as of December 31, 2018.

3 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.[4] The Board also considers additional standards set forth in the IBA and Regulation K.[5]

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.[6] 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, Absa Bank has provided certain commitments that limit the activities of the New York Representative Office. In particular, Absa Bank has committed that the New York Representative Office would not solicit deposits, make credit decisions or any other decisions that bind Absa Bank (except for local administrative matters), or engage in activities related to securities trading, foreign exchange, or money transmission. The New York Representative Office would engage only in the activities described in its application to the Board.

As noted above, Absa Bank engages directly in the business of banking outside the United States. Absa Bank 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 Absa Bank is supervised by the Prudential Authority ("PA"), which operates under the South African Reserve Bank ("SARB"), and the Financial Sector Conduct Authority ("FSCA").[7]

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4 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. 12 CFR 211.24(c)(1).

5 *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).

6 *See* 12 CFR 211.24(d)(2).

7 The Board found that Absa Bank was subject to a level of supervision consistent with approval of the establishment of a representative office in July 1997, which was also the last time the Board considered the supervisory regime in South Africa. Board Order. *See* 83 *Fed. Res. Bull.* 788 (July 30, 1997). Following Barclays' acquisition of Absa Bank in 2005, Barclays closed this representative office.

The South African financial regulatory regime has been materially enhanced in recent years, culminating in legislation establishing a “twin peaks” model of supervision in 2017 and 2018. The PA is responsible for regulating banks and financial institutions, while the SARB is the central bank of the Republic of South Africa and seeks to achieve price stability and financial stability. The FSCA is a stand-alone market conduct regulator and works towards efficiency and integrity of financial markets and consumer protection. Implementation of the twin peaks regulatory model is ongoing, and Absa Bank has indicated that it expects the South African government to enact additional legislation related to conglomerate supervision and financial institution conduct and resolution.

The PA and the SARB apply a risk-based supervisory approach. The PA and/or the SARB supervise 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 PA and/or the SARB conduct off-site monitoring of Absa Bank and AGL 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. Absa Bank is required to provide annual audited financial statements to the SARB.

Based on all the facts of record, including the commitments provided by Absa Bank limiting the activities of the New York Representative Office, it has been determined that Absa Bank 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 following additional standards set forth in the IBA and Regulation K have also been considered: (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]

South Africa is a member of the Financial Action Task Force (“FATF”) regional organization, and Absa Bank has indicated that FATF recommendations have been implemented through the promulgation and implementation of the Financial Intelligence Centre Act, 2001 (“FIC Act”). The FIC Act requires the PA and/or SARB to ensure that banks have adequate controls in place to combat acts of money laundering the financing of terrorism. Accordingly, the PA and/or SARB inspects banks, including Absa Bank, on a routine and non-routine basis to assess whether they have appropriate measures in place, including anti-money laundering (AML) and sanctions policies, an AML training program, and client identification and verification requirements, as required by the FIC Act. Absa Bank has policies and procedures to comply with these laws and regulations, which are monitored by government entities responsible for AML compliance.

Absa Bank appears to have the experience and capacity to support the New York Representative Office. Absa Bank has several representative offices in Africa and has previously operated a representative office in the United States. In addition, Absa Bank has established controls and procedures for the New York Representative Office to ensure compli-

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

ance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Absa Bank'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 Absa Bank's application to establish the New York Representative Office.

Absa Bank has committed to make available to the Board such information on the operations of Absa Bank 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, Absa Bank 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 PA may share information on Absa Bank'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 Absa Bank has provided adequate assurances of access to any necessary information that the Board may request. In addition, the PA has no objection to the establishment of the New York Representative Office.

Whether Absa Bank's proposal would present a risk to the stability of the United States has also been considered. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Absa Bank in its home country; the scope of Absa Bank'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 Absa Bank 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 Absa Bank, Absa Bank'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 Absa Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Absa Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Absa Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Absa Bank 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 1, 2019.

Ann E. Misback
Secretary of the Board