



Legal Developments: Fourth Quarter, 2020

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Cidade de Deus Cia. Comercial de Participações
Nova Cidade de Deus Participações S.A.
BBD Participações S.A.
Fundação Bradesco
Lecce Holdings S.A.
Banco Bradesco S.A.
Osasco, Brazil

Order Approving the Acquisition of a Bank
FRB Order No. 2020-06 (October 7, 2020)

Banco Bradesco S.A. (“Bradesco”), a foreign banking organization subject to the provisions of the Bank Holding Company Act of 1956 (“BHC Act”);¹ Bradesco’s parent companies, Cidade de Deus Cia. Comercial de Participações (“Cidade”), Nova Cidade de Deus Participações S.A. (“Nova Cidade”), BBD Participações S.A. (“BBD”), and Fundação Bradesco (“Fundação”); and a direct subsidiary of Bradesco, Lecce Holdings S.A. (“Lecce”) (collectively, “Applicants”), all of Osasco, Brazil, have requested the Board’s approval to become bank holding companies under section 3 of the BHC Act,² by acquiring all of the voting shares of BAC Florida Bank (“BAC Bank”), Coral Gables, Florida, a state nonmember bank.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 *Federal Register* 34395 (July 18, 2019)). 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.

Bradesco, with consolidated assets of approximately \$276.5 billion, is the third largest bank in Brazil based on asset size.⁴ Bradesco engages in retail and commercial banking and other financial activities throughout Brazil, including wealth management, insurance, and investment banking activities. Outside of Brazil, Bradesco operates in Argentina, the Cayman

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ Under the proposal, Applicants would initially acquire approximately 99 percent of the voting shares of BAC Bank, and shortly thereafter, an interim-bank subsidiary of Applicants (“Interim Bank”) would merge with and into BAC Bank, with BAC Bank as the surviving entity. Upon consummation of the transaction, BAC Bank would operate as Lecce’s direct, wholly owned subsidiary. The merger of Interim Bank into BAC 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). The FDIC approved the bank merger on June 16, 2020.

⁴ Asset and ranking data for Bradesco are as of June 30, 2020, and are based on the exchange ratio on that date.

Islands, Hong Kong, Luxembourg, Mexico, the United Kingdom, and the United States. Bradesco operates in the United States primarily through an uninsured, federally licensed branch in New York, New York; a representative office in Miami, Florida; and a licensed broker-dealer, Bradesco Securities, Inc. (“Bradesco Securities”), New York, New York.

Bradesco’s four parent companies (collectively, “Parent Companies”) together own, directly or indirectly, approximately 74 percent of the voting shares of Bradesco.⁵ Cidade, Nova Cidade, and BBD are non-operating companies, and their sole corporate purpose is to hold equity investments for their shareholders. Fundação is a private foundation that operates schools for students in Brazil. Bradesco and its Parent Companies are and would remain qualifying foreign banking organizations under the Board’s Regulation K and are treated as financial holding companies under section 4(l) of the BHC Act.⁶

BAC Bank, with consolidated assets of approximately \$2.3 billion, is the 423rd largest insured depository institution in the United States, controlling deposits of approximately \$1.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions⁷ in the United States.⁸ BAC Bank operates one deposit-taking office, which is located in Florida. BAC Bank is the 35th largest insured depository institution in Florida, with approximately \$1.9 billion in deposits, which represent 0.3 percent of the total amount of deposits of insured depository institutions in that state.⁹ On consummation of this proposal, Applicants’ U.S. operations would have assets that represent less than 1 percent of the total assets of insured depository institutions in the United States.

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.¹⁰ 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.¹¹ Applicants do not currently control a commercial bank in the United States, and Applicants and BAC Bank do not compete directly in any retail banking market. The Department of Justice has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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

⁵ The remaining 26 percent of Bradesco’s voting shares are publicly traded, and none of those shareholders own 5 percent or more of Bradesco’s voting shares. The Parent Companies also control Bradespar S.A., São Paulo, Brazil, a holding company with a non-controlling equity interest in a large mining company.

⁶ 12 CFR 211.23(a); 12 U.S.C. § 1843(l).

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

⁸ National asset and deposit data are as of June 30, 2020, unless otherwise noted.

⁹ State deposit data are as of June 30, 2019, unless otherwise noted.

¹⁰ 12 U.S.C. § 1842(c)(1)(A).

¹¹ 12 U.S.C. § 1842(c)(1)(B).

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.¹² 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, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.¹³ Applicants appear to have adequate resources to absorb the costs of the proposal and complete the integration of the institutions' operations. In addition, future prospects are consistent with approval.¹⁴

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 Applicants' U.S. operations and BAC Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants; the Board's supervisory experience and those of the other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering ("AML") laws, as well as information provided by a commenter. The Board also has consulted with Banco Central do Brasil ("Central Bank"), the agency with primary responsibility for the supervision of Brazilian banks and other financial institutions, including Bradesco.

The Board also has considered Applicants' plans for implementing the proposal. Applicants have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. The Board also has considered Applicants' plans to withstand the potential impact of near-term economic conditions. In general, Applicants plan to continue the existing business of BAC Bank with largely the same management in place at the bank. The manage-

¹² 12 U.S.C. § 1842(c)(2), (5), and (6). The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

¹³ The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 capital to total assets of Lecce, Bradesco, and each of the Parent Companies.

¹⁴ To effect the merger of Applicants' subsidiary Interim Bank into BAC Bank, the existing shares of BAC Bank would be canceled; shareholders of BAC Bank (other than Applicants) would receive cash for their canceled shares, based on an exchange ratio; and shares of Interim Bank would be converted into shares of BAC Bank. Applicants have the financial resources to effect the proposed transaction.

ment of Applicants and BAC Bank have the experience and resources to operate the combined organization in a safe and sound manner.¹⁵

Section 3 of the BHC Act also prohibits the Board from approving a proposal unless the applicant provides adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.¹⁶ The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act of 1978,¹⁷ and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

Based on all the facts of record, the Board determines that considerations related to the financial condition and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

Supervision or Regulation on a Consolidated Basis

In evaluating this application, and as required by section 3 of the BHC Act, the Board considered whether Bradesco and its Parent Companies are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.¹⁸ The Board has long held that “the legal systems for supervision and regulation vary from country to country, and comprehensive supervision or regulation on a consoli-

¹⁵ A commenter expressed concern about Bradesco’s management and cited a May 2019 news article regarding Brazilian authorities’ anti-corruption efforts. The article stated that Brazilian prosecutors had issued arrest warrants for two Bradesco employees and were considering a civil lawsuit against Bradesco.

Bradesco asserts that the commenter has not provided information that reflects adversely on the competence of Bradesco’s management or the ability of Bradesco to operate BAC Bank in a safe and sound manner.

Bradesco represents that it has adopted and strictly implements rigorous compliance standards and observes high standards of conduct and ethics in its operations.

Bradesco and certain of its current and former executives entered into a commitment agreement with the Central Bank on May 29, 2020 (the “Agreement”), which among other things requires that Bradesco enhance its AML and foreign exchange procedures. Bradesco represents that the Agreement is pursuant to Brazilian law that allows for voluntary agreements only for nonmaterial supervisory matters.

The Board has considered the comments received and the Agreement as part of its review of Applicants’ managerial resources. For the reasons discussed above, management of the Applicants is considered to be satisfactory from a supervisory perspective.

¹⁶ 12 U.S.C. § 1842(c)(3)(A).

¹⁷ 12 U.S.C. § 3101 *et seq.*

¹⁸ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular reports of examination, audit reports, or otherwise; (iii) obtain information on the dealings and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the

dated basis can be achieved in different ways.”¹⁹ In addition, the Board makes case-by-case, institution-specific determinations under the comprehensive supervision standard.²⁰

Bradesco

The Board previously has determined, in connection with applications involving Bradesco and other banks in Brazil, that those banks were subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Central Bank.²¹ Bradesco continues to be supervised by the Central Bank on substantially the same terms and conditions. Based on all the facts of record, including consultation with the Central Bank, the Board determines that Bradesco continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

Bradesco’s Parent Companies

In evaluating this proposal, the Board also considered whether Bradesco’s Parent Companies are subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in their home country. In considering prior applications involving nonbank parent companies of foreign banks, the Board has stated that the system of comprehensive supervision or regulation may vary, depending on the nature of the acquiring company and the proposed investment.²²

Cidade, Nova Cidade, and BBD are private, non-operating companies that hold equity investments for their shareholders. Fundação is a private foundation that operates a large number of schools across Brazil and uses its investment in Bradesco to fund its educational initiatives. Fundação is subject to oversight by Brazilian authorities, including the Ministério Público (“MP”),²³ with respect to its educational initiatives and compliance with Brazilian laws regarding charitable foundations. The Parent Companies’ individual and combined equity holdings consist primarily of Bradesco stock. For the most part, the managers and board members of the Parent Companies also are managers and directors of Bradesco

The Parent Companies are subject to oversight by the Central Bank with respect to the contagion and reputational risks that the Parent Companies may pose to Bradesco and its financial affiliates through investments or other relationships. As part of this periodic review, the Central Bank analyzes whether the Parent Companies’ operations pose a risk of financial loss to Bradesco or its financial affiliates. Under Brazilian law, all transactions between Bradesco and its affiliates, including the Parent Companies, generally must be on arm’s-length terms. The Central Bank receives and reviews financial information about 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.

¹⁹ See e.g., *Banco de Creditoe Inversiones S.A.*, FRB Order No. 2015-25 (September 21, 2015) (“BCI-EJY Order”); *Industrial and Commercial Bank of China Limited*, FRB Order No. 2012-4 (May 9, 2012) (“ICBC-CIC Order”); and *China Investment Corporation*, 96 *Federal Reserve Bulletin* B31 (2010).

²⁰ See *BCI-EJY Order* and *ICBC-CIC Order*.

²¹ See Board Letter to Douglas Landy, Esq., Shearman & Sterling LLP (January 30, 2004). In addition, the Board previously has determined that other Brazilian banks were subject to comprehensive supervision on a consolidated basis by the Central Bank. See Board Letter to Bradley K. Sabel, Esq., Shearman & Sterling LLP (February 8, 2002), and Federal Reserve Bank of Atlanta Letter to Timothy J. Byrne, Esq., Shearman & Sterling LLP (November 7, 2019) (comprehensive consolidated supervision for Itaú Unibanco S.A.); *Banco do Brasil, S.A.*, 98 *Federal Reserve Bulletin* 1 (2012); and *Banco do Estado do Rio Grande do Sul S.A.*, 98 *Federal Reserve Bulletin* 39 (2012).

²² See *BCI-EJY Order* and *ICBC-CIC Order*.

²³ The MP is a public prosecutor’s office and has oversight over Fundação, focusing primarily on the use of the foundation’s resources.

Parent Companies in connection with the Central Bank's annual risk and controls assessment of Bradesco and other supervised financial institutions. The Central Bank has legal authority to obtain additional information about the Parent Companies when appropriate. In addition, the MP and the Central Bank may share information about Fundação and its activities when appropriate. The Central Bank has a variety of tools to address risks that the Parent Companies may pose to the safety and soundness of Bradesco, including imposing additional capital requirements on Bradesco or restrictions on the bank's operations.

The Board has taken into account that the Parent Companies' proposed investment in BAC Bank would be indirect and through a foreign bank that is subject to consolidated supervision by the Central Bank. In addition, the Board has taken into account the structure and limited operations of the Parent Companies, including that their equity holdings consist primarily of Bradesco stock. Based on all the facts of record, the Board determines that the Parent Companies are subject to comprehensive supervision on a consolidated basis by their home country supervisor.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁴ In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act of 1977 ("CRA").²⁵ 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,²⁶ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.²⁷

In addition, the Board considers the banks' overall records of compliance with consumer protection laws and regulations, which include their records of compliance with fair lending laws and regulations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model 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 BAC Bank;²⁸ the consumer compliance, including fair lending, record of BAC Bank; the super-

²⁴ 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 2901 *et seq.*

²⁶ 12 U.S.C. § 2901(b).

²⁷ 12 U.S.C. § 2903.

²⁸ Bradesco's New York branch is not authorized to take insured deposits and is not subject to the CRA.

visory views of the FDIC; confidential supervisory information; information provided by Applicants; and the public comments on the proposal.

Public Comments on the Proposal

A commenter objected to the proposal and alleged disparities in the number of home purchase loans made by BAC Bank to African Americans and Hispanics, as compared to Asians, in the New York City Metropolitan Statistical Area (“New York City MSA”), based on data that BAC Bank reported under the Home Mortgage Disclosure Act of 1975 (“HMDA”) for its 2017 mortgage-related lending activities.²⁹ In addition, the commenter asserted that BAC Bank denied 100 percent of home purchase applications from Hispanics in the New York City MSA based on the bank’s 2017 HMDA data. The commenter also alleged disparities in the number of home purchase loans made by BAC Bank to African Americans as compared to Whites in the Miami, Florida MSA, based on 2017 HMDA data. Furthermore, the commenter alleged that the proposal does not have a public benefit, including under the CRA, and that Bradesco plans to acquire BAC Bank to disproportionately serve affluent clients.

BAC Bank’s Business and Applicants’ Response to the Public Comments

BAC Bank offers a variety of products and services in the areas of personal banking, wealth management, corporate banking, institutional banking, and real estate financing. BAC Bank serves domestic and international customers, and, as previously noted, the bank’s sole deposit-taking office is located in Florida.

In response to the public comments, Bradesco asserts that the fair lending and CRA records of BAC Bank do not support a conclusion that the bank has engaged in improper lending practices. Bradesco represents that BAC Bank has procedures in place to ensure compliance with fair lending laws, including annual fair-lending training for BAC Bank employees and board members, as well as an annual test of the bank’s compliance with fair lending laws performed by auditors. In addition, Bradesco represents that it has a long record of serving the communities in which it operates and plans to continue BAC Bank’s efforts to serve its communities. Bradesco notes that BAC Bank received an overall “Satisfactory” rating on its most recent CRA performance evaluation.

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.³⁰ In addition, the Board considered information provided by Applicants and a commenter.

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.³¹ An institution’s most recent CRA performance evaluation is a particularly important consideration in the appli-

²⁹ 12 U.S.C. § 2801 *et seq.*

³⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Fed. Reg.* 48506, 48548 (July 25, 2016).

³¹ 12 U.S.C. § 2906.

cations 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 BAC Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the HMDA, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of loans 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;³² (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.³³ 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.³⁴

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different races, ethnic groups, or genders 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 often not available from HMDA data.³⁵ Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

CRA Performance of BAC Bank

BAC Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of June 17, 2019 ("BAC Bank Evaluation").³⁶ The bank

³² 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).

³³ *See* 12 CFR 228.22(b).

³⁴ *See* 12 CFR 228.21 *et seq.*

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

³⁶ The BAC Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans as reported under CRA data collection requirements, from January 2016 through December 2018. The evaluation period for community development loans, investments, and services was May 11, 2016, through June 17, 2019.

received a “Low Satisfactory” rating for the Lending Test and “High Satisfactory” ratings for the Investment Test and Service Test.³⁷

Examiners found that BAC Bank’s overall lending levels reflected good responsiveness to the credit needs of the bank’s AA. Examiners determined that the bank’s geographic distribution of loans reflected adequate penetration throughout the bank’s AA and that the bank’s distribution of borrowers reflected adequate penetration among individual borrowers of different income levels. Examiners noted that the bank’s lending performance in moderate-income census tracts was generally below the demographic data and aggregate lending in all three years covered by the evaluation, but noted that the bank demonstrated a capacity and willingness to lend in these areas. Examiners found that BAC Bank was an active mortgage lender and that the bank’s volume of lending activity was good, given the intense competition for loans in the AA. Examiners also found that the bank made use of innovative and flexible lending practices to serve AA credit needs.

Examiners determined that BAC Bank’s level of qualified investments demonstrated good responsiveness to the credit and community development needs of the bank’s AA, when considering available investment opportunities and competition. Examiners noted that BAC Bank’s qualified investments and donations specifically responded to affordable housing, economic development, and community service needs within the bank’s AA. Examiners found that BAC Bank’s delivery systems were reasonably accessible to essentially all portions of the bank’s AA. Examiners noted that the services and business hours offered by BAC Bank did not vary in a way that inconvenienced certain portions of the bank’s AA, particularly LMI geographies or individuals. Examiners also noted that BAC Bank was a leader in providing community development services that benefitted organizations within the bank’s AA.

With respect to BAC Bank’s CRA performance in the Miami MD, an area of concern for the commenter, examiners found that the bank’s lending levels reflected good responsiveness to the MD’s credit needs. They also found that lending volume to LMI geographies and individuals in the MD was adequate. Examiners noted that BAC Bank used innovative and flexible lending practices in order to serve the needs of the Miami MD. Examiners found that the bank had a significant level of qualified investments and donations in the Miami MD and that the bank’s delivery systems were reasonably accessible to essentially all portions of the Miami MD.

Additional Supervisory Views

The Board has consulted with the FDIC and considered BAC Bank’s CRA and consumer compliance, including fair lending, records, as evidenced by the bank’s most recent consumer compliance and CRA examinations. The FDIC considered the public comments received by the Board in connection with its review of the bank merger application related to the proposal.

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

³⁷ The BAC Bank Evaluation included a full-scope evaluation of the bank’s sole AA, which includes two metropolitan divisions (“MDs”) in Florida: the Miami-Miami Beach-Kendall, Florida MD (“Miami MD”) and the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida MD.

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. Applicants represent that, upon consummation of the proposed transaction, they generally would maintain BAC Bank's current product offerings. In addition, Applicants represent that BAC Bank's existing CRA and fair lending efforts would largely be continued or enhanced where appropriate following the acquisition.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

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

To assess the likely effect of a proposed transaction on the stability of the United States banking or financial system, the Board considers a variety of metrics that capture the systemic "footprint" of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁹ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage on the broader economy.⁴⁰

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. In the United States, Applicants engage primarily in corporate banking activities through a U.S. branch and securities brokerage activities through Bradescio Securities. BAC Bank offers a variety of banking products and services, including those related to personal banking, wealth management, and corporate banking. Applicants have and, upon consummation of the proposal, would continue to have a small market share on a nationwide basis with respect to these products and services, and numerous competitors would remain. The combined organization in the United States

³⁸ 12 U.S.C. § 1842(c)(7).

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

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

would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would pose a significant risk to the financial system in the event of 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.

The Board also has considered potential spillover effects from Brazil that could increase risk to the financial stability of the United States banking or financial system. Given the relatively small size of the target, the Board believes that the proposed transaction would pose minimal risk to the stability of the United States banking or financial system.

Accordingly, 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 Applicants 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 New York, acting under delegated authority.

By order of the Board of Governors, effective October 7, 2020.

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

Ann E. Misback
Secretary of the Board

Bangor Bancorp, MHC Bangor, Maine

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2020-08 (October 22, 2020)

Bangor Bancorp, MHC (“Bangor”), Bangor, Maine, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to acquire Damariscotta Bankshares, Inc. (“Damariscotta”), and thereby indirectly acquire Damariscotta’s subsidiary state nonmember bank, Damariscotta Bank & Trust Co. (“Damariscotta Bank”), both of Damariscotta, Maine. Following the proposed acquisition, Damariscotta Bank would be merged into Bangor’s state savings bank subsidiary, Bangor Savings Bank, Bangor, Maine.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 *Federal Register* 23353 (April 27, 2020)).⁴ The time for submitting comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Bangor, with consolidated assets of approximately \$5.5 billion, is the 248th largest insured depository organization in the United States.⁵ Bangor controls approximately \$3.5 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bangor controls Bangor Savings Bank, which operates in Maine, Massachusetts, and New Hampshire. Bangor Savings Bank is the third largest insured depository institution in Maine, controlling deposits of approximately \$3.3 billion, which represent 10.5 percent of the total deposits of insured depository institutions in that state.⁶

Damariscotta, with consolidated assets of approximately \$205.0 million, is the 2747th largest insured depository organization in the United States. Damariscotta controls approximately \$166 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Damariscotta controls Damariscotta Bank, which operates only in Maine. Damariscotta Bank is the 23rd largest insured depository institution in Maine, controlling deposits that represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, Bangor would become the 241st largest insured depository organization in the United States, with consolidated assets of approximately \$5.7 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. Bangor would control total consolidated deposits of approximately \$3.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Maine, Bangor would remain the third largest insured depository organization, controlling deposits of approxi-

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of Damariscotta Bank into Bangor Savings 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 Asset data are as of June 30, 2020, and deposit data are as of June 30, 2019, unless otherwise noted.

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

mately \$3.5 billion, which represent 11.0 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market.⁷ 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.⁸

Bangor and Damariscotta have subsidiary banks that compete directly in two banking markets in Maine. 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 Bangor would control;⁹ 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”);¹⁰ the number of competitors that would remain in each market; and other characteristics of each market.

Banking Market within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Rockland-Camden, Maine, banking market.¹¹ On consummation of the proposal, the Rockland-Camden banking market would remain highly concentrated as measured by the HHI, according to the concentration

⁷ 12 U.S.C. § 1842(c)(1)(A).

⁸ 12 U.S.C. § 1842(c)(1)(B).

⁹ Local deposit and market share data are as of June 30, 2019, 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).

¹⁰ In applying the DOJ Bank Merger Guidelines issued in 1995 (*see* <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ’s Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market’s concentration. *See* <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, 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 (*see* <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), 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.

¹¹ The Rockland-Camden banking market is defined as Appleton, Camden, Criehaven, Cushing, Hope, Isle au Haut, North Haven, Owls Head, Rockland city, Rockport, St. George, South Thomaston, Thomaston, Union, Vinalhaven, Warren, and Washington townships; Matinicus Isle plantation; and Muscle Ridge Islands unorganized territory, all in Knox County, Maine; Hibberts Gore township in Lincoln County, Maine; and Lincolnville township in Waldo County, Maine.

measures applied by the Board. The change in the HHI would be small, and numerous competitors would remain in the market.¹²

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Belfast, Maine, banking market (“Belfast banking market”) warrant a detailed review because the concentration levels on consummation would exceed the thresholds in the DOJ Bank Merger Guidelines and Board precedent when using initial competitive screening data.

Bangor Savings Bank is the largest depository institution in the Belfast banking market, controlling approximately \$199.9 million in deposits, which represent 52.9 percent of market deposits.¹³ Damariscotta Bank is the smallest depository institution in the market, controlling approximately \$17.8 million in deposits, which represent 4.7 percent of market deposits. On consummation of the proposal, Bangor Savings Bank would remain the largest depository institution in the Belfast banking market, controlling approximately \$217.7 million in deposits, which would represent approximately 57.6 percent of market deposits. The HHI in this market would increase 498 points, from 3895 to 4393.

To mitigate the potentially adverse competitive effects of the proposal in the Belfast banking market, Bangor has committed to divest Damariscotta’s only branch in the market, accounting for a total of approximately \$16.6 million in deposits, to a competitively suitable institution.¹⁴ After accounting for the divestiture and Bangor’s commitment to rebook any residual deposits not included in the divestiture outside the Belfast banking market, on consummation of the proposal Bangor would control 53.1 percent of deposits in the Belfast banking market and the HHI would be 3916.

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, taking into consideration the proposed branch divestiture in the Belfast banking market, would not likely have a significantly adverse effect on competition in that market or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

¹² Bangor operates the fourth largest depository institution in the Rockland-Camden market, controlling approximately \$67.1 million in deposits, which represent 4.0 percent of market deposits. Damariscotta operates the sixth largest depository institution in the market, controlling deposits of approximately \$41.7 million, which represent 2.5 percent of market deposits. On consummation of the proposed transaction, Bangor would remain the fourth largest depository organization in the market, controlling deposits of approximately \$108.8 million, which represent 6.5 percent of market deposits. The HHI for the Rockland-Camden market would increase by 20 to 4762, and eight competitors would remain in the market.

¹³ The Belfast banking market is defined as Belfast, Belmont, Brooks, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty, Monroe, Montville, Morrill, Northport, Searsport, Searsport, Stockton Springs, Swanville, Thorndike, Unity, and Waldo townships in Waldo County, Maine; and Unity unorganized territory in Kennebec County, Maine.

¹⁴ As a condition of consummation of the proposed merger, Bangor has committed that it will execute, before consummation of the proposed merger, a sales agreement with a competitively suitable banking organization. Bangor also has committed to complete the divestiture within 180 days after consummation of the proposed transaction. In addition, Bangor has committed that, if the proposed divestiture is not completed within the 180-day period, Bangor 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); and United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).* Further, Bangor has committed that any residual deposits retained from the Damariscotta branch in the Belfast banking market will be reassigned to one or more of Bangor’s branches located in a different banking market.

Based on all of the facts of record, including the proposed divestiture, 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 Bangor and Damariscotta 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.¹⁵ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. 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.

Bangor, Damariscotta, 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 acquisition structured as a cash purchase.¹⁶ The capital, asset quality, earnings, and liquidity of Bangor and Damariscotta are consistent with approval, and Bangor and Damariscotta appear to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval. In reaching these conclusions, the Board also has considered Bangor's plans to withstand the potential impact of near-term economic conditions.

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

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

¹⁶ Bangor would effect the holding company acquisition by merging a newly formed subsidiary of Bangor ("Merger Subsidiary") with and into Damariscotta, with Damariscotta surviving the merger as a subsidiary of Bangor. Following the merger of Merger Subsidiary into Damariscotta, Damariscotta would liquidate and dissolve into Bangor. At the time of the merger of Damariscotta into Bangor, each share of Damariscotta common stock would be converted into a right to receive cash. Damariscotta Bank would then merge with and into Bangor Savings Bank, with Bangor Savings Bank as the surviving entity. Bangor has the financial resources to effect the proposed transaction.

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

The Board also has considered Bangor's plans for implementing the proposal. Bangor 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. In addition, Bangor's management has the experience and resources to operate the combined organization in a safe and sound manner.

Based on all of the facts of record, including Bangor's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board determines that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the record of effectiveness of Bangor and Damariscotta 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.¹⁷ 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 Community Reinvestment Act ("CRA"). The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,¹⁸ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁹

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

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

¹⁷ 12 U.S.C. § 1842(c)(2).

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of relevant federal supervisors, which in this case is the FDIC with respect to both Bangor Savings Bank and Damariscotta Bank.²⁰

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

In general, federal financial supervisors apply 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 Bangor Savings Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,²² automated loan reports, and other reports generated by the institution, in order to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on the institution's (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment areas ("AAs"); (3) record of lending to, and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (5) record of taking action, if warranted, in response to written complaints about the institution's performance in helping to meet credit needs in the bank's AAs.²³ 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.²⁴ Small institutions, such as Damariscotta Bank, are subject only to the Lending Test described above.²⁵

CRA Performance of Bangor Savings Bank

Bangor Savings Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of October 29, 2018 ("Bangor Savings Bank

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

²¹ 12 U.S.C. § 2906.

²² 12 U.S.C. § 2801 *et seq.*

²³ See 12 CFR 228.22(b).

²⁴ See 12 CFR 228.21 *et seq.*

²⁵ 12 CFR 228.26(a).

Evaluation”).²⁶ Bangor Savings Bank received an “Outstanding” rating for each of the Lending, Investment, and Service Tests.

Examiners found that Bangor Savings Bank’s lending levels reflected excellent responsiveness to AA credit needs. Examiners noted that the bank’s geographic distribution of loans reflected excellent penetration throughout the bank’s AAs. Examiners found that the bank’s lending to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes, given the product lines offered by the institution. Examiners noted that the bank made extensive use of innovative and flexible lending practices in order to serve AA credit needs. In addition, examiners found that the bank is a leader in making community development loans.

Examiners found that Bangor Savings Bank had an excellent level of qualified community development investments and donations. Examiners noted that the bank exhibited excellent responsiveness to credit and community economic development needs. Examiners also noted that the bank made significant use of innovative and complex investments to support community development initiatives.

Examiners found that Bangor Savings Bank’s delivery systems were readily available to all portions of the bank’s AAs. Examiners noted that the services and business hours offered by Bangor Savings Bank did not vary in a way that inconvenienced customers in its AAs, particularly LMI geographies or individuals. Examiners also noted that the bank was a leader in providing community development services, which benefited organizations throughout its AAs, including organizations focused on small business development, financial education, and programs for youth.

CRA Performance of Damariscotta Bank

Damariscotta Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of December 7, 2015 (“Damariscotta Bank Evaluation”).²⁷ Damariscotta Bank received a “Satisfactory” rating for the Lending Test.

Examiners found that Damariscotta Bank’s loan-to-deposit ratio was reasonable given the bank’s size and financial condition as well as the credit needs of its AA. Examiners noted that the bank made a substantial majority of the sampled home mortgage and small business loans in its AA. Examiners found that the distribution of borrowers reflected a reasonable penetration of loans among businesses of different sizes and retail customers of different income levels.

Additional Convenience and Needs Considerations

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Bangor represents that consummation of the proposal would provide an expanded branch and ATM network to Bangor Saving Bank’s and Damariscotta Bank’s existing customers. In addition, Bangor represents that the

²⁶ The Bangor Savings Bank Evaluation was conducted using Large Institution CRA Examination Procedures. FDIC examiners reviewed home mortgage and small business lending data, community development loans, community development investments and services, as well as innovative and flexible lending practices, from July 28, 2015, through October 29, 2018. The Bangor Savings Bank Evaluation covered Bangor Savings Bank’s six AAs located in the states of Maine and New Hampshire. The Bangor Savings Bank Evaluation included a full-scope review of four of these AAs. A limited-scope review was conducted in the remaining two AAs.

²⁷ The Damariscotta Bank Evaluation was conducted using the Interagency Small Institution CRA Examination Procedures. Examiners reviewed home mortgage and business lending data from February 9, 2009, through December 7, 2015. The Damariscotta Bank Evaluation reviewed the bank’s activities in its sole AA, comprising 14 census tracts in mid-coastal Maine.

proposal would create a stronger financial institution that would provide better service to the communities served by Bangor Savings Bank and Damariscotta Bank.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

Section 3 of the BHC Act requires the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”²⁸

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.²⁹ 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.³⁰

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.³¹

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

²⁸ 12 U.S.C. § 1842(c)(7).

²⁹ Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

³⁰ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

³¹ See *People's United Financial, Inc.*, FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

cial banking activities.³² The pro forma organization would not have cross-border activities or exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Conclusion

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

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

By order of the Board of Governors, effective October 22, 2020.

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

Ann E. Misback
Secretary of the Board

³² Bangor and Damariscotta both offer a range of retail and commercial banking products and services. Bangor 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.

Bern Bancshares, Inc.
Bern, Kansas

Order Approving an Increase in Ownership of a Bank Holding Company
FRB Order No. 2020-09 (December 8, 2020)

Bern Bancshares, Inc. (“Bern”), Bern, Kansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to increase its ownership interest from 6.38 percent to 6.74 percent of the voting shares of UBT Bancshares, Inc. (“UBT”), Marysville, Kansas. UBT controls United Bank & Trust (“UBT Bank”), Marysville, Kansas, a state member bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (85 *Federal Register* 60469 (September 25, 2020)).³ The time for submitting comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Bern, with consolidated assets of approximately \$104.3 million, is the 4,053rd largest insured depository organization in the United States.⁴ Bern controls approximately \$80.1 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Bern controls State Bank of Bern (“Bern Bank”), Bern, Kansas, a state nonmember bank, which operates only in Kansas. Bern is the 160th largest insured depository organization in Kansas, controlling deposits of approximately \$81.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

UBT, with consolidated assets of approximately \$728.8 million, is the 1,207th largest insured depository organization in the United States. UBT controls approximately \$549.7 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. UBT controls UBT Bank, which operates only in Kansas. UBT is the 37th largest insured depository organization in Kansas, controlling deposits of approximately \$458.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Noncontrolling Investment

Bern has stated that it does not propose to control or exercise a controlling influence over UBT as a result of the proposal. Under the BHC Act, a company controls a bank or another company if (1) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company; (2) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or (3) the Board determines that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.⁶ The Board’s Regulation Y sets forth presumptions for determining when one company generally would be considered to exercise

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 CFR 262.3(b).

⁴ National asset, deposit, ranking, and market share data are as of June 30, 2020, unless otherwise noted. State deposit, ranking, and market share data are as of June 30, 2019, unless otherwise noted.

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

⁶ 12 U.S.C. § 1841(a)(2).

a controlling influence over another company for purposes of the BHC Act.⁷ The presumptions generally are based on a combination of control over voting securities and the presence of other significant relationships that may facilitate control, such as director interlocks, business relationships, and limiting contractual rights.

As a result of the proposal, Bern would acquire up to 6.74 percent of UBT's voting shares. When combined with this ownership interest, Bern's other relationships with UBT would not trigger any of the Regulation Y presumptions of control.⁸ Furthermore, because Bern also would control less than 10 percent of the outstanding securities of each class of voting securities of UBT, Bern would trigger the Regulation Y presumption that it does not control UBT or UBT Bank.⁹ Based on these considerations and all the facts of record, it does not appear that Bern would control UBT or UBT Bank.

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.¹⁰ 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.¹¹

Bern and UBT have subsidiary banks that compete directly in two banking markets in Kansas. 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 Bern would control;¹² 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");¹³ the number of

⁷ See 12 CFR part 225, subpart D.

⁸ 12 CFR 225.32. The Board previously has approved the acquisition by a bank holding company of less than a controlling interest in a bank. See, e.g., *First Citizens Bancshares, Inc.*, FRB Order No. 2017-01 (2017) (acquiring up to 9.0 percent of the voting shares of a bank); *Penn Bancshares, Inc.*, 92 *Federal Reserve Bulletin* C37 (2006) (acquiring up to 24.89 percent of the voting shares of a bank); *Sun Banks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985) (acquiring up to 15 percent of the voting shares of a bank).

⁹ 12 CFR 225.33(a)(1)-(2).

¹⁰ 12 U.S.C. § 1842(c)(1)(A).

¹¹ 12 U.S.C. § 1842(c)(1)(B).

¹² Local deposit and market share data are as of June 30, 2019, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹³ In applying the DOJ Bank Merger Guidelines issued in 1995 (see <https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995>), the Board looks to the DOJ's Horizontal Merger Guidelines issued in 1992 and amended in 1997, for the characterization of a market's concentration. See <https://www.justice.gov/atr/horizontal-merger-guidelines-0>. Under these Horizontal Merger Guidelines, which were in effect prior to 2010, 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 (see <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>), 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.

competitors that would remain in each market; other characteristics of each market; and the noncontrolling nature of the proposed investment.

Banking Market within Established Guidelines

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Nemaha County/Brown County, Kansas, banking market (“Nemaha County/Brown County banking market”).¹⁴ If Bern and UBT were considered a combined organization on consummation of the proposal, the Nemaha County/Brown County banking market would remain highly concentrated as measured by the HHI, according to the concentration measures applied by the Board. The change in the HHI would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in the market.¹⁵

Banking Market Warranting Special Scrutiny

The structural effects that consummation of the proposal would have in the Marshall County, Kansas, banking market (“Marshall County banking market”)¹⁶ warrant a detailed review. If Bern and UBT were considered a combined organization on consummation, the concentration levels in this market would exceed the thresholds in the DOJ Bank Merger Guidelines and Board precedent when using initial competitive screening data.

The Board previously has stated that noncontrolling interests in directly competing depository institutions may raise competitive issues under the BHC Act. The Board has noted that a company need not acquire control of another company to lessen competition between them substantially and has recognized that a significant reduction in competition can result from the sharing of nonpublic financial information between two organizations that are not under common control.¹⁷ Accordingly, the Board examines the specific facts of each case to determine whether a minority investment in a competitor would result in significant adverse competitive effects in a banking market.¹⁸

Bern operates the seventh largest depository institution in the Marshall County banking market, controlling approximately \$37.4 million in deposits, which represent 5.0 percent of market deposits. UBT operates the second largest depository institution in the market, controlling approximately \$182.2 million in deposits, which represent 24.3 percent of market deposits. If considered a combined organization on consummation of the proposal, Bern and UBT would be the second largest depository organization in the Marshall County banking market, controlling approximately \$219.7 million in deposits, which would

¹⁴ The Nemaha County/Brown County banking market is defined as Nemaha County, Kansas; and Brown County, Kansas (minus the towns of Everest and Horton).

¹⁵ Bern operates the seventh largest depository institution in the Nemaha County/Brown County banking market, controlling approximately \$38.6 million in deposits, which represent 3.9 percent of market deposits. UBT operates the third largest depository institution in the market, controlling approximately \$168.0 million in deposits, which represent 17.0 percent of market deposits. If considered a combined organization on consummation of the proposal, Bern and UBT would become the second largest depository organization in the market, controlling approximately \$206.7 million in deposits, which represent 20.9 percent of market deposits. The HHI would increase by 134 to 2083, and eight competitors would remain in the market.

¹⁶ The Marshall County banking market is defined as Marshall County, Kansas; and Washington County, Kansas (minus the town of Clifton).

¹⁷ See, e.g., *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *SunTrust Banks, Inc.*, 76 *Federal Reserve Bulletin* 542 (1990).

¹⁸ See, e.g., *First Citizens Bancshares, Inc.*, FRB Order No. 2017-01 (2017); *City Holding Company*, 96 *Federal Reserve Bulletin* B21 (2010); *Passumpsic Bancorp.*, 92 *Federal Reserve Bulletin* C175 (2006); *BOK Financial Corp.*, 81 *Federal Reserve Bulletin* 1052 (1995); *Mansura Bancshares, Inc.*, 79 *Federal Reserve Bulletin* 37 (1993); *SunBanks, Inc.*, 71 *Federal Reserve Bulletin* 243 (1985).

represent approximately 29.3 percent of market deposits. The HHI in this market would increase 242 points, from 2053 to 2295.

Although the proposal would exceed the DOJ Bank Merger Guidelines if treated as a full merger between Bern and UBT, the Board has considered additional factors that indicate the proposal is not likely to have a significantly adverse effect, or mitigate the concern that the proposal would have a significantly adverse effect, on competition in the Marshall County banking market. As discussed above, Bern would not control UBT or UBT Bank upon consummation of the proposal. In addition, Bern has committed not to acquire, or seek to acquire, any confidential or nonpublic financial information about the activities of UBT or UBT Bank in the Marshall County banking market that is not available to all of UBT's shareholders. These limitations on Bern's access to information significantly reduce the potential that Bern could influence the behavior of UBT or change its own behavior in an anti-competitive way based on advance or confidential knowledge about the plans, operations, or policies of UBT Bank in the Marshall County banking market. Furthermore, even if Bern and UBT were considered a combined organization on consummation of the proposal, ten competitors would remain in the Marshall County banking market, including one competitor with more than 34 percent of market deposits and another with more than 11 percent of market deposits.

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 would not likely have a significantly adverse effect on competition in the Nemaha County/Brown County banking market, the Marshall County banking market, or in any other relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all of the facts of record, including the limited and noncontrolling nature of Bern's investment and Bern's commitment not to acquire, or seek to acquire, confidential or nonpublic financial information about or from UBT or UBT Bank regarding their activities in the Marshall County banking market, and for the reasons discussed 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 Bern and UBT 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.¹⁹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, liquidity, and earnings performance, as well as the impact of the proposed funding of the transaction. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations involved in

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

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

Bern, UBT, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. Bern would increase its ownership interest in UBT as a result of stock repurchases by UBT, which would not require Bern to expend any financial resources. The capital, asset quality, earnings, and liquidity of Bern and UBT are consistent with approval. Bern and UBT appear to have adequate resources to absorb the related costs of the proposal. In addition, future prospects are considered consistent with approval. In reaching these conclusions, the Board also has considered Bern's plans to withstand the potential impact of near-term economic conditions.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Bern, UBT, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Bern; 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.

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

Based on all of the facts of record, including Bern's supervisory record and managerial and operational resources, 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 Bern and UBT 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.²⁰ 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 Community Reinvestment Act ("CRA").²¹ 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,²² 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.²³

²⁰ 12 U.S.C. § 1842(c)(2).

²¹ 12 U.S.C. § 2901 *et seq.*

²² 12 U.S.C. § 2901(b).

²³ 12 U.S.C. § 2903.

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

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Bern Bank and UBT Bank, the fair lending and compliance records of both banks, the supervisory views of the Federal Deposit Insurance Corporation ("FDIC") and the Federal Reserve Bank of Kansas City ("Reserve Bank"), confidential supervisory information, and information provided by Bern.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA evaluation, as well as other information and the supervisory views of relevant federal supervisors, which in this case are the FDIC with respect to Bern Bank and the Reserve Bank with respect to UBT Bank.²⁴

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.²⁵ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test") and a community development test ("Community Development Test") to evaluate the performance of an intermediate small bank, such as UBT Bank, in helping to meet the credit needs of the communities it serves. The Lending Test specifically evaluates an institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the Lending Test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975,²⁶ automated loan reports, and other reports generated by the institution, in order to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is evaluated based on the institution's (1) loan-to-deposit ratio and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; (2) percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment areas ("AAs"); (3) record of lending to, and, as appropriate, engaging in other lending-related activities for, borrowers of different income levels and businesses and farms of different sizes; (4) geographic distribution of loans; and (5) record of taking action, if warranted, in response to written complaints about the institution's performance in helping to meet

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 81 *Federal Register* 48506, 48548 (July 25, 2016).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

credit needs in the bank's AAs.²⁷ 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 through such activities to community development lending, investment, and service needs.²⁸ Small institutions, such as Bern Bank, are subject only to the Lending Test.²⁹

CRA Performance of Bern Bank

Bern Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of February 4, 2019 ("Bern Bank Evaluation").³⁰ The bank received a "Satisfactory" rating for the Lending Test.

Examiners found that Bern Bank's loan-to-deposit ratio was reasonable given the institution's size and financial condition and the credit needs of the bank's sole AA. Examiners also found that the bank made a substantial majority of its small farm and small business loans inside its AA. Examiners noted that the bank's geographic distribution of loans reflected reasonable dispersion throughout the bank's AA. Examiners found that the bank's distribution of loans reflected reasonable penetration among farms and businesses of different sizes. Examiners also noted that the bank had not received any CRA-related complaints since its previous evaluation.

CRA Performance of UBT Bank

UBT Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of June 24, 2019 ("UBT Bank Evaluation").³¹ UBT Bank received "Satisfactory" ratings for the Lending Test and the Community Development Test.

Examiners found that UBT Bank's average net 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 also found that the bank originated a substantial majority of its loans within the its AAs. Examiners noted that the geographic distribution of loans reflected reasonable dispersion of lending throughout the bank's AAs and that the bank's lending reflected a reasonable penetration among individuals of different income levels and businesses and farms of different revenue sizes.

Examiners found that UBT Bank's community development activity reflected adequate responsiveness to the community development needs of the bank's AAs.

²⁷ See 12 CFR 228.26(b).

²⁸ See 12 CFR 228.26(c).

²⁹ 12 CFR 228.26(a).

³⁰ The Bern Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed small farm and small business loans from February 19, 2013, through February 4, 2019. The Bern Bank Evaluation included a full-scope review of the bank's sole AA, which consists of Marshall and Nemaha Counties in Kansas; Pawnee County, Nebraska; and the western half of Richardson County, Nebraska.

³¹ The UBT Bank Evaluation was conducted using Intermediate Small Bank CRA Examination Procedures. Examiners reviewed home mortgage loans originated between January 1, 2016, and December 31, 2017, and small business and small farm loans originated between July 1, 2018, and December 31, 2018. The UBT Bank Evaluation included a full-scope review of the bank's Northeast Kansas AA and a limited-scope review of the bank's Riley County Metropolitan AA.

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. Bern represents that consummation of the proposal would not affect the products and services offered by Bern Bank or UBT Bank.

Conclusion on Convenience and Needs Considerations

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

Financial Stability

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

³² 12 U.S.C. § 1842(c)(7).

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 (Feb. 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 passive increase of a noncontrolling interest in the target institution. The proposal involves a target that has less than \$10 billion in total assets, and, if Bern and UBT were combined, the pro forma organization would have less than \$100 billion in total assets. Both the acquirer and the target are predominantly engaged in retail and commercial banking activities.³⁶ The hypothetical pro forma organization would have no 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 hypothetical organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. 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 Bern with all the conditions imposed in this order and the commitment referenced above concerning Bern's access to information regarding UBT and UBT Bank. The Board's approval is also conditioned on receipt by Bern of all required regulatory approvals. For purposes of this action, the conditions and commitment are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 8, 2020.

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

Ann E. Misback
Secretary of the Board

³⁶ Bern and UBT both offer a range of retail and commercial banking products and services. Bern 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.

Order Issued Under International Banking Act

Allfunds Bank S.A.U.
Madrid, Spain

*Order Approving the Establishment of a Representative Office
FRB Order No. 2020-07 (October 20, 2020)*

Allfunds Bank S.A.U. (“Allfunds”), Madrid, Spain, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in Miami, Florida (the “Miami 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 Miami, Florida (*Miami Herald*, May 22, 2020). The time for submitting comments has expired, and the Board has considered all comments received.

Allfunds, with total assets of approximately \$2.5 billion, is a Spanish bank providing clearing, settlement, and administration services through a platform offered to financial services firms, including banks, wealth managers, broker-dealers, insurance companies, fund managers, and pensions.² Allfunds is the largest investment fund administration platform in Europe based on assets under administration (“AuA”), with over \$615 billion AuA.³ Its foreign operations include subsidiary companies in Brazil, Luxembourg, and Switzerland; branches in Italy, Singapore, and the United Kingdom; and representative offices in Brazil, Chile, Colombia, and the United Arab Emirates.

Allfunds is an indirect wholly owned subsidiary of LHC4 (UK) Limited (“LHC4” – total assets of \$2.3 billion), London, United Kingdom. LHC4, a holding company, holds Allfunds through Liberty Partners, S.L.U. (“Liberty”), Madrid, Spain.⁴

The Miami Representative Office would act as a liaison with U.S. clients and prospective clients of Allfunds. The Miami Representative Office also would market and solicit new business for banking products and technological services provided by Allfunds.⁵

¹ 12 U.S.C. § 3107(a).

² Asset data are as of December 31, 2019.

³ AuA and ranking data are as of May 20, 2020.

⁴ LHC4’s largest shareholder is LHC1 Limited (“LHC1”), which indirectly owns and controls LHC4 through two wholly owned intermediaries, LHC2 Limited and LHC3 Plc, all of Saint Helier, Jersey. LHC1 is jointly held by Hellmann & Friedman and its affiliates (“H&F”), San Francisco, California, and Eiffel Investment Pte Ltd. (“Eiffel”), Singapore. Eiffel is an investment vehicle of GIC Special Investments Pte Ltd., a direct subsidiary of GIC (Ventures) Pte Ltd., Singapore, which is owned by the Minister for Finance of the Government of Singapore. H&F and Eiffel each indirectly control Allfunds. LHC4’s second largest shareholder, with 22.5 percent of its voting shares is BNP Paribas S.A. (“BNPP”), Paris, France. BNPP’s interest in LHC4 is held through BNP Paribas Securities Services and BNP Paribas Asset Management, both of Paris, France. LHC4’s sole remaining shareholder is Credit Suisse Group AG, which holds its shares through its bank subsidiary Credit Suisse AG (“Credit Suisse”), both of Zürich, Switzerland.

⁵ 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.⁶ The Board also considers additional standards set forth in the IBA and Regulation K.⁷

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 representative office, taking into account the nature of such activities and the operating record of the applicant bank.⁸ 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.

As a foreign bank, Allfunds engages directly in the business of banking outside the United States. Allfunds 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 Allfunds is supervised by Banco de España (“Bank of Spain”) under the Single Supervisory Mechanism (“SSM”). The SSM is a system of financial supervision composed of the European Central Bank (“ECB”) and the national competent authorities of participating European Union Member states by which specific tasks are distributed between the ECB and the national competent authorities. Under the SSM framework, the ECB has direct prudential supervisory responsibility over “significant institutions,” while the national competent authorities have direct prudential supervisory responsibility over “less significant institutions,” subject to the oversight of the ECB.⁹ A common prudential regulatory framework applies to banks supervised under the SSM, including those supervised by the national competent authorities as less significant institutions. Through its oversight func-

⁶ 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).

⁷ 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).

⁸ See 12 CFR 211.24(c) and (d)(2).

⁹ With respect to both significant institutions and less significant institutions, the national competent authorities retain authority over supervisory matters that were not transferred to the SSM, including consumer protection and the prevention of money laundering and terrorist financing.

tion, the ECB aims to ensure that the supervisory activities carried out by national competent authorities are in line with high supervisory standards, with a view toward fostering consistency of supervisory outcomes within the SSM.¹⁰

Under the SSM, Allfunds is a “less significant institution” and is subject to direct prudential supervision by the Bank of Spain under the oversight of the ECB. The Board has previously assessed the SSM, including in determining that the ECB and Bank of Spain exercise comprehensive supervision over certain Spanish banks designated as “significant institutions” under this framework.¹¹ The SSM framework has not changed materially since it was last considered by the Board.¹² The Board has previously found that Allfunds’ parent foreign banks—Credit Suisse and BNPP—are subject to comprehensive supervision on a consolidated basis, and home country supervision of the parent foreign banks meets the standards required for establishment of a representative office.¹³

Based on all the facts of record, it has been determined that Allfunds, Credit Suisse, and BNPP are subject to a supervisory framework that is consistent with the current and proposed activities of the Miami 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.¹⁴

Spain is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with those recommendations, Spain has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Spain, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their operations, including foreign branches. The Bank of Spain enforces those requirements with respect to Spanish banks, including Allfunds. Allfunds has policies and procedures to comply with these laws and regulations. These policies and procedures are monitored by government entities, including the Bank of Spain, which is responsible for anti-money-laundering compliance.

¹⁰ Where necessary, the ECB may decide to directly supervise any less significant institution to ensure that high supervisory standards are applied consistently.

¹¹ See *Abanca Corporación Bancaria, S.A.*, FRB Order 2018-20 (September 28, 2018) and Board letter to Rita Milazzo dated August 1, 2017 (finding comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.).

¹² See e.g., *Abanca Corporación Bancaria, S.A.*, FRB Order 2018-20 (September 28, 2018); *Nordea Bank Abp.*, FRB Order 2018-16 (August 3, 2018); *Deutsche Pfandbriefbank AG*, FRB Order 2018-01 (January 3, 2018); *ING Bank N.V.*, FRB Order 2017-27 (October 20, 2017); Board letter to Rita Milazzo dated August 1, 2017 (finding comprehensive consolidated supervision for Banco Bilbao Vizcaya Argentaria, S.A.); and *Unione di Banche Italiane, S.p.A.*, FRB Order 2017-11 (April 13, 2017).

¹³ See *Credit Suisse*, 85 *Federal Reserve Bulletin* 68 (January 1999); *BNP Paribas*, 91 *Federal Reserve Bulletin* 51 (Winter 2005). See also Federal Reserve Bank of New York letter to Phillip G. Feigen dated January 31, 2020 (finding supervision consistent with the activities of the proposed representative office for Banque Transatlantique); and *Banque SYZ SA*, FRB Order 2016-09 (June 23, 2016).

¹⁴ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

Allfunds appears to have the experience and capacity to support the Miami Representative Office. Allfunds has several representative offices in South America and the Middle East and operates branches and subsidiaries in six countries. In addition, Allfunds has established controls and procedures for the Miami Representative Office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Allfunds' record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, it has been determined that financial and managerial factors are consistent with approval of Allfunds' application to establish the Miami Representative Office.

Allfunds has committed to make available to the Board such information on the operations of Allfunds 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,¹⁵ and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Allfunds 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 Bank of Spain may share information on Allfunds' 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 Allfunds has provided adequate assurances of access to any necessary information that the Board may request. In addition, the Bank of Spain has no objection to the establishment of the Miami Representative Office.

Whether Allfunds' 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 Allfunds in its home country; the scope of Allfunds' 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 Allfunds 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, it has been determined that 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 Allfunds, Allfunds' application to establish the Miami 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.¹⁶ Should any restrictions on access to information on the operations or activities of Allfunds and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Allfunds or its affiliates with applicable federal statutes, the Board may require termination of any of Allfunds' direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Allfunds with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁷ 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.

¹⁵ 12 U.S.C. § 1841 *et seq.*

¹⁶ 12 CFR 265.7(d)(12).

¹⁷ The Board's authority to approve the establishment of the Miami Representative Office parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida or its agent, the Florida Office of Financial Regulation, to license the Miami 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 20, 2020.

Margaret McCloskey Shanks
Deputy Secretary of the Board