



Legal Developments: Third Quarter, 2011

Order Issued under Bank Holding Company Act

Order Issued under Section 3 of the Bank Holding Company Act

Comerica Incorporated
Dallas, Texas

Comerica Bank
Dallas, Texas

Order Approving the Acquisition of a Bank Holding Company, Merger of Banks, and Establishment of Branches

Comerica Incorporated, Dallas, Texas (“Comerica”), a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under section 3 of the BHC Act¹ to acquire Sterling Bancshares, Inc. (“Sterling”) and thereby indirectly acquire its subsidiary bank, Sterling Bank, both of Houston, Texas.

In addition, Comerica’s subsidiary state member bank, Comerica Bank, Dallas, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act² (“Bank Merger Act”) to merge with Sterling Bank, with Comerica Bank as the surviving entity. Comerica Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to retain and operate branches at the locations of Sterling Bank’s main office and branches.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (76 *Federal Register* 14,010 (2011)).⁴ As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request was provided to the appropriate banking agency. The time for filing comments has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.⁵

Comerica, with total consolidated assets of approximately \$55.2 billion, is the 32nd largest depository organization in the United States, controlling deposits of approximately \$41.1 billion, which represent less than 1 percent of the total amount of deposits of insured

¹ 12 U.S.C. § 1842.

² 12 U.S.C. § 1828(c).

³ 12 U.S.C. § 321.

⁴ 12 CFR 262.3(b).

⁵ The Board received 44 comments supporting the proposal and 2 comments opposing the proposal.

depository institutions in the United States.⁶ Comerica controls two subsidiary banks, Comerica Bank and Comerica Bank & Trust, National Association, Ann Arbor, Michigan, which operate in five states.⁷ In Texas, Comerica is the 11th largest depository organization, controlling deposits of approximately \$5.2 billion.

Sterling has total consolidated assets of approximately \$5.1 billion and Sterling Bank operates only in Texas. Sterling is the 14th largest depository organization in the Texas, controlling deposits of approximately \$4.1 billion.

On consummation of this proposal, Comerica would remain the 32nd largest depository organization in the United States, with total consolidated assets of approximately \$60.3 billion. Comerica would control domestic deposits of approximately \$45.3 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, Comerica would become the 7th largest depository organization, controlling deposits of approximately \$9.3 billion, which represent approximately 1.9 percent of deposits of insured depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the BHC Act, the home state of Comerica is Michigan,⁸ and Sterling is located in Texas.⁹

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.¹⁰ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

The BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. Both statutes also prohibit the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly out-

⁶ Nationwide asset and deposit data are as of March 31, 2011. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

⁷ Comerica Bank operates in Arizona, California, Florida, Michigan, and Texas. Comerica Bank & Trust, National Association operates only in Michigan.

⁸ See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

⁹ For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. See 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and 1842(d)(2)(B).

¹⁰ 12 U.S.C. §§ 1842(d)(1)(A)–(B) and 1842(d)(2)–(3). Comerica is adequately capitalized and adequately managed, as defined by applicable law. Sterling Bank has been in existence and operated for the minimum period of time required by Texas law and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)–(ii). On consummation of the proposal, Comerica would control less than 10 percent of the total amounts of deposits of insured depository institutions in the United States (12 U.S.C. § 1842(d)(2)(A)). Comerica also would control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions in the relevant state (12 U.S.C. § 1842(d)(2)(B)–(D)). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

weighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹¹

Comerica and Sterling have subsidiary depository institutions that compete directly in the Dallas, Fort Worth, and Houston banking markets, all in Texas. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by Comerica Bank and Sterling Bank,¹² the concentration level of market deposits and the increase in those levels, as measured by the Herfindahl–Hirschman Index (“HHI”) under the Department of Justice Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),¹³ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in all three banking markets.¹⁴ On consummation, one banking market would remain unconcentrated, one banking market would remain moderately concentrated, and one banking market would remain highly concentrated, as measured by the HHI. The change in the HHI in each market would be consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, numerous competitors would remain in each banking market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction 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 the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the banking markets where the subsidiary depository institutions of Comerica and Sterling compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

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

¹² Deposit and market share data are as of June 30, 2010, adjusted to reflect mergers and acquisitions through March 31, 2011, 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 of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift institution 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 Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anti-competitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI more than 200 points. Although the DOJ and the Federal Trade Commission recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁴ Those banking markets and the effects of the proposal on the concentrations of banking resources are described in the appendix.

Financial, Managerial, and Other Supervisory Considerations

Section 3 of the BHC Act and the Bank Merger Act require the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors.¹⁵ The Board has considered these factors carefully in light of all the facts of record, including confidential supervisory and examination information from the relevant federal and state supervisors of the organizations involved in the proposal, and publicly reported and other financial information, including information provided by Comerica and Sterling.¹⁶

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered the proposal carefully under the financial factors. Comerica, Sterling, and their subsidiary depository institutions are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a share exchange. Based on its review of the record, the Board finds that Comerica has sufficient financial resources to effect the proposal.

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 Comerica, Sterling, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. Comerica and its subsidiary depository institutions are considered to be well managed. The Board also has considered Comerica's plans for implementing the proposal, including the proposed management after consummation. In addition, the Board has considered the future prospects of the organizations involved in the proposal in light of financial and managerial resources and the proposed business plan.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.¹⁷

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board is required to consider the effects of the proposal on the convenience and needs of

¹⁵ 12 U.S.C. §§ 1842(c)(2)–(3) and 1828(c)(5).

¹⁶ A commenter expressed concern that consummation of the proposal could eliminate its ability to bring a lawsuit against Sterling or Sterling Bank and pursue complaints with other agencies. The jurisdiction of the courts and of other agencies is a matter beyond the statutory factors the Board is authorized to consider. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

¹⁷ A commenter expressed concern about lawsuits by Sterling shareholders regarding the proposal. Those lawsuits have been dismissed.

the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹⁸

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹⁹

The Board has considered carefully all the facts of record, including evaluations of the CRA performance of Sterling Bank and Comerica’s subsidiary banks, data reported by Comerica under the Home Mortgage Disclosure Act (“HMDA”),²⁰ other information provided by Comerica, confidential supervisory information, and public comment received on the proposal. The Board received a number of comments commending Comerica for its lending and CRA activities, but one commenter criticized the performance of Comerica and Sterling in meeting the credit needs of borrowers in LMI areas in Houston.

A. CRA Performance Evaluation

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisor of the CRA performance record of the relevant insured depository institutions. 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 of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.²¹

Comerica Bank received an “outstanding” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas (“Reserve Bank”), as of August 16, 2010 (“2010 Evaluation”).²² Sterling Bank received a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation, as of February 4, 2009 (“2009 Evaluation”). Comerica has represented that Comerica Bank’s current CRA program will be implemented at the combined organization following consummation of the proposal.

CRA Performance of Comerica Bank. In addition to the overall “outstanding” rating that Comerica Bank received in the 2010 Evaluation, it received separate overall ratings of “outstanding” or “satisfactory” in all the states reviewed.²³ Examiners characterized as excellent

¹⁸ 12 U.S.C. § 2901 et seq.; 12 U.S.C. § 1842(c)(2).

¹⁹ 12 U.S.C. § 2903.

²⁰ 12 U.S.C. § 2801 et seq.

²¹ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

²² Comerica’s other subsidiary insured depository institution, Comerica Bank & Trust, National Association, is a trust company that does not grant credit to the public in the ordinary course of its business and, accordingly, is not subject to the CRA. See 12 CFR 25.11(c)(3).

²³ The evaluation period was from January 1, 2008, through December 31, 2009. In addition to reviewing HMDA-reportable lending, CRA-reportable lending, and community development lending, examiners reviewed Comerica Bank’s home equity lending at its request because the bank had elected to collect data about such lending. See 12 CFR 228.22(a)(1). As of the end of the evaluation period, loans to businesses accounted for almost 72 percent of the bank’s loan portfolio and residential real estate loans accounted for less than 7 percent. As a result, examiners gave the greatest weight in the 2010 Evaluation to CRA-reportable and community development lending.

the bank's overall performance in providing small business loans²⁴ in LMI census tracts in its assessment areas.²⁵ They also stated that the bank's overall distribution of small business loans to businesses of different sizes was good. With respect to Comerica Bank's home mortgage lending, examiners reported that the overall geographic distribution and distribution to borrowers of different income levels of those loans were good.

Examiners noted that the bank offers government and proprietary lending programs to help meet the credit needs of LMI borrowers and smaller, newer businesses. Micro business loans and Small Business Administration ("SBA") loans accounted for more than \$102 million and \$34 million, respectively, of the lending activity during the evaluation period. Examiners found that the bank had made a relatively high level of community development loans throughout its service area during the evaluation period, totaling more than \$464 million.²⁶

In the 2010 Evaluation, the bank received an overall "outstanding" rating under the investment test. Examiners reported that the bank invested more than \$143 million in low-income-housing tax credit funds to address affordable housing needs in the bank's assessment areas. Bank also made more than \$10.8 million in community development grants and donations in support of affordable housing, small business development, and organizations serving LMI areas and individuals.²⁷

The bank received an overall "outstanding" rating under the service test in the 2010 Evaluation. Examiners reported that the bank's products and services were generally accessible to all businesses and individuals in the assessment areas.²⁸ Examiners characterized Comerica Bank as a leader in providing community development services, including financial literacy, affordable housing seminars, and economic development activities.²⁹

CRA Performance of Sterling Bank. In the 2009 Evaluation, Sterling Bank was rated "low satisfactory" under the lending test.³⁰ In the bank's Houston assessment area, examiners reported that Sterling Bank's distribution of small business loans among census tracts of different income levels was reasonable in comparison to that of lenders in the aggregate, as was its distribution of small business loans to businesses of different sizes.³¹ Examiners

²⁴ In this context, a small business loan is a loan with an original amount of \$1 million or less that is secured by nonfarm, nonresidential property or is a commercial or industrial loan to a borrower in the United States.

²⁵ Examiners reported that the extent of the bank's small business lending in LMI census tracts in the Houston area during the evaluation period compared very favorably with that of lenders in the aggregate. Lending data for lenders in the aggregate represent the cumulative lending for all financial institutions that have reported small business lending data in a particular area.

²⁶ Comerica Bank originated four community development loans totaling \$1.6 million in the Houston area during the evaluation period. Examiners characterized this amount of lending as a low level of activity, given the need for and the opportunities to make such loans.

²⁷ Examiners characterized the bank's level of community development investment in its Houston assessment area as excellent by noting that the bank invested more than \$14 million in low-income-housing tax credit projects in the area during the evaluation period.

²⁸ Examiners concluded that the bank's branches and ATMs are reasonably accessible to individuals and census tracts of different income levels in the bank's Houston assessment area. In addition, examiners stated that the bank's record of opening and closing branches within its Houston assessment area had not adversely affected accessibility of services to LMI individuals and census tracts.

²⁹ The 2010 Evaluation reported that the bank provided a relatively high level of community development services in its Houston assessment area during the evaluation period.

³⁰ The evaluation included HMDA-reportable and small business lending for 2006, 2007, and 2008. The evaluation period with respect to community development loans, investments, and services was from November 24, 2005, to February 24, 2008. The Houston assessment area accounted for more than 75 percent of the bank's deposits and more than 70 percent of the bank's loan originations during the evaluation period.

³¹ During the evaluation period, Sterling Bank made significantly more small business loans than home mortgage loans. Accordingly, examiners placed more weight on the bank's small business lending in evaluating performance under the lending test.

stated that in this assessment area, the bank demonstrated a strong distribution of home purchase loans among census tracts with different income levels but had a poor distribution of home purchase loans among borrowers of different income levels.³²

Examiners characterized the bank's participation in specialized loan programs in its Houston assessment area as good, noting that the bank originated 200 SBA loans totaling more than \$118 million. Sterling Bank's level of community development lending in the Houston assessment area was described by examiners as satisfactory overall, and they noted that the bank originated 21 community development loans totaling more than \$33 million.

The bank received an overall "high satisfactory" rating under the investment test in the 2009 Evaluation. The bank's qualified investments in its Houston assessment area totaled \$17.1 million during the evaluation period, and examiners reported that the bank routinely made grants and donations to organizations that promoted community development.

In the 2009 Evaluation, Sterling Bank received an overall "outstanding" rating under the service test. Examiners described the bank as demonstrating outstanding responsiveness with respect to services in the Houston assessment area. Examiners stated that the bank's branch network in the assessment area provided ready accessibility to bank products and services and included seven full-service offices in moderate-income census tracts. The bank was characterized by examiners as a leader in providing community development services in the Houston assessment area. Examiners reported that the bank supported organizations promoting community development by allowing its personnel to serve as board members and to conduct fundraising, among other efforts.

B. Branch Closings

One commenter expressed concern that the proposed merger would lead to branch closures and adversely affect banking services in LMI areas. Comerica has represented that it has not decided whether to close any branches after consummation of the proposal but that any closures that do occur would be consolidations of branches located near each other.

The Board has considered that federal banking law provides a specific mechanism for addressing branch closings.³³ Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch and to adopt a policy regarding branch closures. In the 2010 Evaluation, examiners found that Comerica Bank's record of opening or closing branches had not adversely affected the accessibility of the bank's services to LMI areas or LMI individuals. In addition, the Board notes that it will continue to review the branch closing record of Comerica Bank in the course of conducting CRA performance evaluations.

C. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of Comerica in light of public comment received on the proposal. A commenter alleged, based on pre-

³² By contrast, examiners characterized Comerica Bank's distribution of HMDA-reportable loans in its Houston assessment area as excellent. As noted, Comerica has represented that Comerica Bank will implement its current CRA program at the combined organization following consummation of the proposal.

³³ Section 42 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831r-1, as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34,844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency and customers of the branch with at least 90 days' notice, before the date of the proposed branch closings. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

liminary 2010 HMDA data,³⁴ that Comerica made high cost mortgage loans disproportionately to African American borrowers relative to nonminority borrowers.³⁵ The data indicate that of Comerica Bank's HMDA-reportable loans to minority borrowers in 2009, a higher percentage were high cost mortgage loans than was the case for lenders in the aggregate.³⁶

The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates must conduct their mortgage lending operations without any abusive lending practices and in compliance with all consumer protection laws.

The HMDA data also indicate that in Comerica Bank's Michigan assessment areas in 2009, which accounted for a substantial majority of the bank's mortgage lending in that year, minority borrowers represented a higher percentage of Comerica Bank's loan originations than was the case for lenders in the aggregate.³⁷ In addition, the Board notes that of the bank's HMDA reportable loans to minority borrowers in 2009, fewer than 13 percent were high cost mortgage loans.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Comerica is excluding any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the addition of pricing information, provide only limited information about the covered loans.³⁸ The HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by Comerica Bank. In the 2010 Evaluation, examiners reported that they did not find any evidence that Comerica Bank had engaged in illegal discrimination or in any other illegal credit practices. In addition, the Board has considered information provided by Comerica about its compliance risk-management systems.

The record of this application, including confidential supervisory information, indicates that Comerica has taken steps to ensure compliance with fair lending and other consumer

³⁴ The Board reviewed HMDA data for 2008, 2009, and preliminary 2010 data for Comerica Bank in its statewide assessment areas for California, Michigan, and Texas.

³⁵ A "high cost mortgage loan" is a mortgage loan with an annual percentage rate that equals or exceeds the average prime offer rate for a comparable transaction by 1.5 percentage points if secured by a first lien on a dwelling or 3.5 percentage points if secured by a subordinate lien (12 CFR 203.4(a)(12)).

³⁶ The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

³⁷ In 2009, mortgage loans in Comerica Bank's Michigan assessment areas accounted for approximately 71 percent of the bank's total HMDA-reportable loans. Aggregate HMDA data for 2010 are not yet available.

³⁸ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

protection laws and regulations. Comerica represents that Comerica Bank has such compliance policies and procedures in place, including centralized underwriting of mortgage loans to minimize exceptions to lending criteria, and an additional review of mortgage application denials. In addition, Comerica Bank uses third-party analysis of mortgage underwriting and pricing, including regression and disparate impact modeling, and regularly reviews HMDA denial ratios and rate-spread distributions. Moreover, Comerica has stated that Sterling Bank's operations will be integrated into Comerica Bank's existing fair lending compliance program after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including the overall performance records of Comerica Bank and Sterling Bank under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

D. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including reports of examination of the CRA records of Comerica Bank and Sterling Bank, information provided by Comerica, public comments received on the proposal, and confidential supervisory information, including records of compliance with consumer laws and regulations. Comerica has represented that consummation of the proposal would allow it to offer the full range of its current products and services to Sterling's customers.

Based on a review of the entire record, and for the reasons discussed above, the Board has concluded that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the proposal.

Other Considerations

Comerica Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of Sterling Bank. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved.³⁹ 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

³⁹ A commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application (12 CFR 225.16(e)). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony (12 CFR 262.3(e) and 262.25(d)). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The request fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

the BHC Act, the Bank Merger Act, and the FRA.⁴⁰ The Board's approval is specifically conditioned on compliance by Comerica and Comerica Bank with the conditions in this order and all the commitments made to the Board in connection with the proposal. For purposes of this proposal, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision 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 after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective July 13, 2011.

Voting for this action: Chairman Bernanke, Vice Chair Yellen, and Governors Duke, Tarullo, and Raskin.

Robert deV. Frierson
Deputy Secretary of the Board

Appendix

Comerica and Sterling Banking Markets Consistent with Board Precedent and DOJ Bank Merger Guidelines						
Bank	Rank	Amount of Deposits (dollars)	Market Deposit Shares (percent)	Resulting HHI	Change in HHI	Remaining Number of Competitors
Dallas, Texas —includes Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie, and Ferris in Ellis County.						
Comerica Pre-Consummation	5	\$3.29 bil.	2.8	1972	1	129
Sterling	38	\$230 mil.	0.2			
Comerica Post-Consummation	5	\$3.52 bil.	3.0			
Houston, Texas —includes Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties.						
Comerica Pre-Consummation	12	\$1.4 bil.	1.2	1507	5	108
Sterling	6	\$3.3 bil.	2.7			
Comerica Post-Consummation	6	\$4.7 bil.	3.9			
Fort Worth, Texas —includes Tarrant, Johnson, and Wise counties; Parker County (excluding Mineral Wells); and the southwestern quadrant of Denton County, including Roanoke.						
Comerica Pre-Consummation	25	\$171 mil.	.7	972	0	76
Sterling	61	\$35 mil.	.1			
Comerica Post-Consummation	16	\$206 mil.	.8			

Note: Data are as of June 30, 2010. All deposit amounts are unweighted. All rankings, market deposit shares, and HHIs are based on thrift institution deposits weighted at 50 percent.

⁴⁰ One commenter requested that the Board delay action on the proposal. As noted, the Board has accumulated a significant record in this case, including reports of examination, confidential supervisory information, public reports and information, and public comments. The commenter has had ample opportunity to submit its views and, in fact, has provided multiple written submissions that the Board has considered carefully in acting on the proposal. Based on a review of all the facts of record, the Board has concluded that the record in this case is sufficient to warrant action at this time and that no further delay in considering the proposal is necessary.

Orders Issued under International Banking Act

Banca Popolare di Vicenza S.C.p.A.
Vicenza, Italy

Order Approving Establishment of a Representative Office

Banca Popolare di Vicenza S.C.p.A. (“Bank”), Vicenza, Italy, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York City (*Daily News*, February 24, 2011). The time for filing comments has expired, and all comments received have been considered.

Bank is organized as a cooperative bank under Italian law and has approximately 60,000 shareholders. Bank’s shares are widely held, and each shareholder holds less than 1 percent of the bank’s shares.

Bank, with total consolidated assets of approximately \$50.9 billion,² is the 11th largest bank in Italy by asset size.³ Bank provides consumer banking and wholesale banking services to private individuals, professionals, and small- and medium-sized companies. Bank’s foreign operations include a financial subsidiary in Ireland and four representative offices: two in China, one in India, and one in Brazil.

The proposed representative office would serve as a liaison between Bank and its customers.⁴ The office would also conduct research and assemble credit information on companies; organize seminars, workshops, and conventions; solicit banking business for Bank; and assist its clients in obtaining banking and other services in the United States.

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board must consider whether the foreign bank directly engages in the business of banking outside of the United States and whether the foreign bank has furnished to the Board the information it needs to adequately assess the application.⁵ In addition, the Board shall take into account whether the foreign bank is subject to

¹ 12 U.S.C. § 3107(a).

² Unless otherwise indicated, data are as of June 30, 2011.

³ Ranking data are as of December 31, 2009.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of the 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)).

⁵ 12 U.S.C. § 3107(a)(2).

comprehensive supervision on a consolidated basis by its home-country supervisor.⁶ The Board also considers additional standards set forth in the IBA and Regulation K.⁷

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

With respect to supervision by home-country authorities, the Board previously has determined, in connection with applications involving other banks in Italy, that those banks were subject to home-country supervision on a consolidated basis by the Bank of Italy, the primary regulator of commercial banks in Italy.⁸ Bank is supervised by the Bank of Italy on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home-country supervisor. The Bank of Italy has no objection to the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operation in the home country, overall financial resources, and standing with the home-country supervisor, financial and managerial factors are consistent with approval. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Italy is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with those recommendations, Italy 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 Italy, and credit institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

⁶ *Id.*; 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 the home-country supervisor (i) ensures that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtains information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtains information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receives 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) evaluates 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.

⁷ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank's home-country supervisor has consented to the establishment of the office; the financial and managerial resources of the bank; (2) 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; (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 and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. *See also Standard Chartered Bank*, 95 *Federal Reserve Bulletin* B98 (2009). 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 toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk (12 U.S.C. § 3105(d)(3)(E)).

⁸ See, e.g., Board letter to Luigi L. De Ghenghi dated September 25, 2007 (comprehensive consolidated supervision for Intesa Sanpaolo S.p.A.); *Banca di Roma, S.p.A.*, 2002 WL 1848520 (2002); *Banca Intesa, S.p.A.*, 86 *Federal Reserve Bulletin* 433 (2000).

With respect to access to information about Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant governmental authorities have been communicated with regarding access to information. Bank has committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In addition, subject to certain conditions, Bank of Italy may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the conditions described below, it has been determined that Bank has provided adequate assurances of access to any necessary information that the Board may request.

Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Bank in its home country, the scope of Bank's activities, including the type 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 Bank in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

Based on the foregoing and all the facts of record, and subject to commitments made by Bank to the Board, as well as the terms and conditions set forth in this order, Bank's application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.⁹ Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁰ For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with the findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective September 27, 2011.

Robert deV. Frierson
Deputy Secretary of the Board

⁹ 12 CFR 265.7(d)(12).

¹⁰ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Banking Department, to license the proposed representative office of Bank in accordance with any terms or conditions that it may impose.

The Bank of Fukuoka, Ltd. Fukuoka, Japan

Order Approving Establishment of a Representative Office

The Bank of Fukuoka, Ltd. (“Bank”), Fukuoka, Japan, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA¹ to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, October 21, 2010). The time for filing comments has expired, and all comments received have been considered.

Bank, with total assets of approximately \$117 billion, is the 13th largest bank in Japan by asset size.² Bank engages in a range of commercial and retail banking activities through its 166 domestic branches. Outside Japan, Bank operates three representative offices in China, including one in Hong Kong. Bank is wholly owned by Fukuoka Financial Group, Inc. (“FFG”), a Japanese financial holding company,³ and Bank has no operations in the United States.⁴

The proposed representative office would act as a liaison between Bank and its U.S. customers and correspondent banks. The proposed representative office would also engage in other representational activities, including gathering information and conducting research.⁵

In acting on an application under the IBA and Regulation K 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 of 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 may also consider additional standards set forth in the IBA and Regulation K.⁷

¹ 12 U.S.C. § 3107(a).

² Asset and ranking data are as of June 30, 2011.

³ Japan Trustee Services Bank, Ltd., a Japanese trust bank, owns 7.37 percent of the voting stock of FFG. No other shareholder owns 5 percent or more of the voting shares of FFG.

⁴ In 1986, Bank opened a representative office in New York, New York, that was converted to a branch in 1989 and closed in 1999.

⁵ A representative office may engage in representational and administrative functions in connection with the banking activities of the 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)).

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 the home-country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the 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 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.

⁷ See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2). These standards include (1) whether the bank’s home-country supervisor has consented to the establishment of the office; the financial and managerial resources of

As noted above, Bank engages directly in the business of banking outside the United States. Bank also 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 previously determined, in connection with applications involving other banks in Japan, that those banks were subject to home-country supervision on a consolidated basis by their home-country supervisor, Japan's Financial Services Agency ("FSA").⁸ Bank is supervised by the FSA on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that Bank is subject to comprehensive supervision on a consolidated basis by its home-country supervisor. The FSA has no objection to the establishment of the proposed representative office.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operations in its home country, its overall financial resources, and its standing with its home-country supervisor, financial and managerial factors are consistent with approval of the proposed representative office. Bank appears to have the experience and capacity to support the proposed representative office and has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Japan 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, Japan 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 Japan, and Japanese financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Bank operations, the restrictions on disclosure in relevant jurisdictions in which Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. Bank and FFG have committed to make available to the Board such information on the operations of Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Bank and FFG have 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

the bank; (2) 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; (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 and its U.S. affiliates are in compliance with U.S. law; the needs of the community; and the bank's record of operation. *See also Standard Chartered Bank*, 95 *Federal Reserve Bulletin* B98 (2009). 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 toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk (12 U.S.C. § 3105(d)(3)(E)).

⁸ *See, e.g., Mitsubishi UFJ Financial Group, Inc.*, 97 *Federal Reserve Bulletin* 10 (2011) (order dated June 14, 2011) and 95 *Federal Reserve Bulletin* B34 (2009); *Shizuoka Bank, Ltd.*, 94 *Federal Reserve Bulletin* C119 (2008); *eBANK Corporation*, 94 *Federal Reserve Bulletin* C68 (2008); *The Wakashio Bank, Limited*, 89 *Federal Reserve Bulletin* 237 (2003).

FSA may share information on Bank's operations with other supervisors, including the Board. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Bank and FFG have provided adequate assurances of access to any necessary information that the Board may request.

Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Bank in its home country, the scope of Bank's activities, including the type 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 Bank in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

Based on the foregoing and all the facts of record, Bank's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.⁹ Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹⁰ For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing in connection with the findings and decision herein and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective September 27, 2011.

Robert deV. Frierson
Deputy Secretary of the Board

⁹ 12 CFR 265.7(d)(12).

¹⁰ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Banking Department, to license the proposed office of Bank in accordance with any terms or conditions that it may impose.