



Legal Developments: First Quarter, 2013

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

FirstMerit Corporation
Akron, Ohio

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2013-3 (March 22, 2013)

FirstMerit Corporation (“FirstMerit”), Akron, Ohio, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Citizens Republic Bancorp, Inc. (“Citizens”) and thereby indirectly acquire its subsidiary bank, Citizens Bank (“Citizens Bank”), both of Flint, Michigan. Immediately following the proposed acquisition, Citizens Bank would be merged into FirstMerit’s subsidiary bank, FirstMerit Bank, N.A. (“FirstMerit Bank”), Akron.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (77 *Federal Register* 64338 (2012)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

FirstMerit, with consolidated assets of approximately \$14.9 billion, is the 76th largest insured depository organization in the United States, controlling approximately \$11.8 billion in consolidated deposits. FirstMerit Bank operates in Ohio, Illinois, and Pennsylvania. FirstMerit Bank is the seventh largest depository institution in Ohio, controlling deposits of approximately \$8.7 billion, which represent 3.6 percent of the total deposits of insured depository institutions in the state.³ FirstMerit Bank is the 19th largest insured depository institution in Illinois, controlling deposits of approximately \$2.7 billion, and the 128th largest insured depository institution in Pennsylvania, controlling deposits of approximately \$200 million, which represent less than 1 percent of the total deposits of insured depository institutions in those states, respectively.

Citizens, with total consolidated assets of \$9.6 billion, controls Citizens Bank, which controls approximately \$7.2 billion in deposits. Citizens Bank operates in Michigan, Wisconsin, and Ohio. Citizens Bank is the 62nd largest insured depository institution in Ohio, con-

¹ 12 U.S.C. § 1842.

² The merger of Citizens Bank into FirstMerit Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) under the Bank Merger Act.

³ State deposit and asset data are as of June 30, 2012. All other asset data are as of December 31, 2012, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

trolling deposits of approximately \$306.5 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, FirstMerit would become the 55th largest depository organization in the United States, controlling consolidated deposits of approximately \$19.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FirstMerit Bank would remain the seventh largest insured depository institution in Ohio, controlling deposits of approximately \$9.0 billion, which would represent 3.7 percent of the total deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁴ However, this section further provides that the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.⁵ In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the applicant controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.⁶

For purposes of the BHC Act, the home state of FirstMerit is Ohio,⁷ and Citizens is located in Michigan, Ohio, and Wisconsin.⁸ FirstMerit is well capitalized and well managed under applicable law. Michigan and Wisconsin have no minimum requirements for period of operation,⁹ and Citizens Bank has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is \$9.9 trillion. On consummation of the proposed transaction, FirstMerit would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 3(d) of the BHC Act.

⁴ The standard was changed from adequately capitalized and adequately managed to well capitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(d)(1)(A).

⁵ 12 U.S.C. § 1842(d)(1)(B).

⁶ 12 U.S.C. § 1842(d)(2)(A).

⁷ 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.

⁸ 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).

⁹ See MSA § 487.13702 and WSA § 221.0901(8) (both permit interstate acquisitions but do not impose a requirement for period of operation).

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁰

FirstMerit and Citizens compete directly in the Akron and Cleveland, Ohio, banking markets.¹¹ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by FirstMerit and Citizens,¹² the concentration levels 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 markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Akron and Cleveland banking markets. On consummation of the proposal, the banking markets would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.¹⁴

¹⁰ 12 U.S.C. § 1842(c)(1).

¹¹ The Akron banking market is defined as Summit County (excluding Sagamore Hills, Northfield Center, Twinsburg, Richfield and Boston townships, the villages adjoining these townships, and the cities of Twinsburg, Macedonia, and Hudson); Franklin, Ravenna, Charlestown, Paris, Brimfield, Rootstown, Edinburg, Palmyra, Suffield, Randolph, Atwater, and Deerfield townships, and the city of Kent in Portage County; Guilford, Wadsworth, and Sharon townships, and the city of Wadsworth in Medina County; Lawrence and Lake townships in Stark County; and Milton and Chippewa townships, and the villages adjoining those townships, in Wayne County, all in Ohio (the “Akron banking market”). The Cleveland, Ohio banking market is defined as Cuyahoga, Lake, Lorain, and Geauga Counties; Sagamore Hills, Northfield Center, Twinsburg, Richfield, and Boston townships, the villages surrounding those townships, and the cities of Macedonia, Twinsburg, and Hudson in Summit County; Homer, Harrisville, Westfield, Spencer, Chatham, Lafayette, Montville, Litchfield, York, Medina, Granger, Liverpool, Brunswick Hills, and Hinckley townships, and the cities of Medina and Brunswick in Medina County; Mantua, Hiram, Nelson, Shalersville, Freedom, and Windham townships, and the cities of Aurora and Streetsboro in Portage County; and the city of Vermilion (not the whole township) in Erie County, all in Ohio (the “Cleveland banking market”).

¹² Deposit and market share data are as of June 30, 2012, 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 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 by more than 200 points. Although DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, *see* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

¹⁴ FirstMerit Bank operates the sixth largest depository institution in the Cleveland banking market, controlling deposits of approximately \$3.1 billion, which represent approximately 6.7 percent of market deposits. Citizens Bank operates the 17th largest depository institution in the market, controlling deposits of approximately \$293.4 million, which represent less than 1 percent of market deposits. On consummation, FirstMerit Bank would operate the sixth largest depository institution in the market, controlling weighted deposits of approximately \$3.4 billion, which represent approximately 7.3 percent of market deposits. The HHI would increase by

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

Based on all of the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the banking markets in which FirstMerit Bank and Citizens Bank compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include the financial and managerial resources (including consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders) and future prospects of the company and banks concerned; the effectiveness of the company in combatting money laundering; the convenience and needs of the communities to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all of these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by FirstMerit, and a public comment received on the proposal.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary 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. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and 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 the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. FirstMerit and FirstMerit Bank are well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger, structured as a share exchange. Each share of Citizens' common stock would be cancelled and converted into

9 points to 1045. FirstMerit Bank operates the largest depository institution in the Akron banking market, controlling deposits of approximately \$3.0 billion, which represent approximately 29.6 percent of market deposits. Citizens Bank operates the 22nd largest depository institution in the market, controlling deposits of approximately \$13.1 million, which represent less than 1 percent of market deposits. On consummation, FirstMerit Bank would control deposits of approximately \$3 billion, which represent approximately 29.7 percent of market deposits. The HHI would increase by 8 points to 1497.

the right to receive FirstMerit common stock based on an exchange ratio.¹⁵ FirstMerit is in stable financial condition, and the asset quality and earnings of both FirstMerit Bank and Citizens Bank are consistent with approval. On a pro forma basis, the acquisition of Citizens is not expected to have a negative impact on FirstMerit's operations. Based on its review of the record, the Board finds that the organization 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 FirstMerit, FirstMerit Bank, Citizens, and Citizens Bank, 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. The Board also has considered FirstMerit's plans for implementing the proposal.

FirstMerit, FirstMerit Bank, Citizens, and Citizens Bank are each considered to be well managed. FirstMerit's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of FirstMerit have substantial knowledge and experience in the banking and financial services sectors.¹⁶ Both the chairman and chief executive officer of FirstMerit would continue in their roles following consummation of the proposed transaction.

FirstMerit successfully integrated into its operations the banking operations of three insured depository institutions located in the Chicago, Illinois, market, including the assets and deposits of two failed depository institutions in 2010. FirstMerit is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. FirstMerit would implement its risk-management policies, procedures, and controls at the combined organization, and they are considered acceptable from a supervisory perspective. In addition, FirstMerit's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and FirstMerit is proposing to integrate Citizens Bank's existing management and personnel in a manner that augments FirstMerit's management.¹⁷

FirstMerit's integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval. 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.

¹⁵ As part of the proposed transaction, FirstMerit would pay the United States Department of the Treasury in full for all of Citizens' Troubled Asset Relief Program ("TARP") preferred stock, including accumulated but unpaid dividends.

¹⁶ On consummation, FirstMerit's board of directors would include two additional directors from Citizens' current board of directors.

¹⁷ The commenter referred to press releases issued by two rating agencies raising concerns regarding possible integration difficulties and FirstMerit's entry into new markets. The commenter also referred to outstanding litigation associated with the proposed transaction. The record in this case supports the conclusion that FirstMerit has the necessary support structures, and human and financial resources, to integrate the organizations' operations. In addition, the referenced litigation has been settled.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant 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,¹⁹ 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.²⁰

The Board has considered all the facts of record, including reports of examination of the CRA performance of FirstMerit Bank and Citizens Bank, data reported by FirstMerit Bank and Citizens Bank under the Home Mortgage Disclosure Act (“HMDA”),²¹ other information provided by FirstMerit, confidential supervisory information, and the public comment received objecting to the proposal. The commenter objected to the proposal on the basis of the mortgage lending records of FirstMerit Bank and Citizens Bank as reflected in HMDA data.

1. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.²² The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.²³ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of FirstMerit Bank. FirstMerit Bank was assigned an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of November 17, 2008 (“FirstMerit Evaluation”). Examiners concluded that the distribution of loans among borrowers of different income levels was good overall, including lending in LMI areas.²⁴ OCC examiners noted that FirstMerit Bank’s community development lending performance reflected an excellent level of responsiveness to community needs. FirstMerit Bank received

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

¹⁹ 12 U.S.C. § 2901(b).

²⁰ 12 U.S.C. § 2903.

²¹ 12 U.S.C. § 2801 *et seq.*

²² See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

²³ 12 U.S.C. § 2906.

²⁴ The Akron, Canton, and Cleveland assessment areas were selected for full-scope reviews in Ohio. FirstMerit Bank’s Ohio ratings are based primarily on conclusions reached for the bank’s performance in these full-scope assessment areas. Performance in the Akron and Cleveland assessment areas is weighed more heavily than the Canton assessment area. A limited scope review was performed in the Toledo assessment area.

an “outstanding” rating on the Lending Test and “high satisfactory” ratings on both the Investment and Service Tests.²⁵

CRA Performance of Citizens Bank. Citizens Bank was assigned a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of November 1, 2010 (“Citizens Evaluation”),²⁶ with ratings of “high satisfactory” for the Lending Test and “low satisfactory” for the Investment and Service Tests.²⁷ Examiners concluded that Citizens Bank exhibited excellent penetration among borrowers of different income levels and businesses of different sizes based on the bank’s record of lending to small businesses.

2. Fair Lending Record

The Board has considered the records of FirstMerit Bank and Citizens Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the FirstMerit and Citizens Evaluations and an evaluation of FirstMerit Bank’s record of performance in providing community development lending and services since the FirstMerit Evaluation. This also includes an evaluation of FirstMerit Bank’s fair lending policies and procedures and consideration of other agencies’ views on FirstMerit Bank’s record of performance under fair lending laws. The Board also has taken into account the comment on the application.

The FirstMerit Evaluation. As described in the FirstMerit Evaluation, OCC examiners found that FirstMerit Bank provided significant levels of community development loans and qualified community development investments. In the FirstMerit Evaluation, examiners noted that delivery systems were accessible to geographies and individuals of different income levels. Examiners found that FirstMerit Bank had a good record of participating in community development initiatives.

Examiners stated that FirstMerit Bank had been highly responsive to community needs through its community development lending. The community development loans reflected a variety of community development purposes including affordable housing, funding for organizations providing community services targeted to LMI individuals and families, activities that revitalize or stabilize LMI geographies, and initiatives that provide financing to small businesses. With respect to community development services, FirstMerit Bank was found to have a good record of participating in community development initiatives, especially considering the limited opportunities for working with local organizations that provide community development services.

The OCC assigned FirstMerit Bank a rating of “outstanding” for the Lending Test, noting that the bank had an excellent community development lending record. Examiners found that FirstMerit Bank’s overall geographic distribution performance and borrower distribution performance were good. Examiners noted that FirstMerit Bank’s excellent community

²⁵ The evaluation period for the Lending Test in the FirstMerit Evaluation was January 1, 2004, through December 31, 2007, except for community development loans, which had an evaluation period from May 17, 2004, through November 17, 2008. The evaluation period for the Investment and Service Tests was from May 17, 2004, through November 17, 2008.

²⁶ The rating was an improvement from the “needs to improve” rating Citizens Bank received during the previous CRA review, in 2008. The review period for the 2010 evaluation of loans reported under the HMDA and the CRA was January 1, 2008, to December 31, 2009, and for the evaluation of community development activities was January 1, 2008, through October 31, 2010. Citizens Bank’s current CRA evaluation by the Federal Reserve Bank of Chicago commenced in the fourth quarter of 2012.

²⁷ For the 2010 evaluation, the review period for the evaluation of loans reported under the HMDA and the CRA was January 1, 2008, to December 31, 2009, and for the evaluation of community development activities was January 1, 2008, through October 31, 2010.

development lending record had a significant positive impact on its Lending Test performance. During the evaluation period, FirstMerit Bank generated 56 community development loans totaling \$43.5 million in the Akron Metropolitan Statistical Area (“MSA”), and 66 community development loans totaling \$38.2 million in the Cleveland MSA. In addition to the community development loans, examiners noted that in the Cleveland MSA, FirstMerit Bank originated 19 loans totaling \$4 million for home mortgage and small business purposes that also had community development characteristics, which demonstrate FirstMerit Bank’s commitment to community development lending. Examiners noted that in the Toledo MSA, the bank’s performance was weaker than the bank’s overall performance in the state due to weaker geographic distribution records and lower levels of community development lending.²⁸

Examiners assigned FirstMerit Bank a rating of “high satisfactory” for the Investment Test. Examiners highlighted FirstMerit Bank’s qualified investments in the Ohio Equity Fund Limited Partnership funds and other low-income housing tax credit facilities, FirstMerit Bank’s community development corporation (“CDC”), and grants to local organizations to support community development initiatives within the bank’s assessment areas. In particular, FirstMerit’s \$7.6 million equity investment in the FirstMerit CDC was given positive consideration by the examiners. Projects financed by the CDC are types that the bank cannot normally provide similar degrees of support because the CDC can use less stringent financing standards. Most of the investments addressed affordable housing and social service needs of LMI individuals. Examiners also noted that FirstMerit Bank had taken leadership roles in some projects and combined loan and investment activities to fund initiatives.

The Citizens Evaluation. As noted above, Citizens Bank received a “high satisfactory” rating for the Lending Test in the Citizens Evaluation. Federal Reserve examiners concluded that Citizens Bank exhibited excellent penetration among borrowers of different income levels and businesses of different sizes based on the bank’s record of lending to small businesses. Examiners found that Citizens Bank made a relatively high level of community development loans in the full review assessment areas in Michigan and Ohio. Examiners highlighted Citizens Bank’s use of innovative and flexible lending programs and practices to help meet the credit needs of LMI individuals and LMI areas.

The Reserve Bank assigned Citizens Bank a rating of “low satisfactory” for the Investment Test. Examiners found that Citizens Bank had an adequate level of qualified community development investments. Examiners noted that Citizens Bank was adequately responsive to the credit and community development needs in its assessment areas and occasionally used innovative or complex investments to support community development initiatives.

The Reserve Bank assigned Citizens Bank a rating of “low satisfactory” for the Service Test. Examiners found that service delivery systems were accessible to all portions of Citizens Bank’s assessment areas. Examiners found that Citizens Bank provided an adequate level of community development services in most geographies.

FirstMerit Bank’s efforts since the 2008 CRA Evaluation. According to FirstMerit, since the FirstMerit Evaluation, FirstMerit Bank has invested \$18 million in Low Income Housing Tax Credit Equity Funds syndicated by the Ohio Capital Corporation for Housing, providing direct equity to affordable housing projects throughout Ohio. FirstMerit Bank has pro-

²⁸ The Toledo assessment area was not included as a full-scope assessment area because of FirstMerit’s relatively low level of lending volume in the Toledo MSA. For example, from January 1, 2004, to December 31, 2007, FirstMerit reported only 373 total loans in the Toledo MSA as compared to 8,081 in the Akron MSA, 5,430 in the Canton MSA, and 11,454 in the Cleveland MSA.

vided small business loans of almost \$665 million in the Akron, Cleveland, and Toledo MSAs.²⁹ During this same time period, FirstMerit Bank has provided community development loans of over \$126 million in the Akron, Cleveland, and Toledo MSAs.³⁰ Examples of community development projects include \$7.1 million in Akron to create single family homes for LMI families and affordable housing for low-income seniors, participation in the Cleveland Housing Network to provide housing for more than 2,000 families in Cleveland, and \$4.6 million in a senior housing development in Toledo.

FirstMerit's Fair Lending Program. The Board also considered information about FirstMerit's compliance and risk management systems and the steps it has taken to ensure compliance with fair lending laws. FirstMerit has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. FirstMerit's legal and compliance risk management program includes procedures to evaluate new laws and regulations to determine applicability to FirstMerit's mortgage operations, annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls, fair lending training for all lending-related employees, specialized training for personnel with higher fair lending risk, ongoing statistical regression analysis of loan data, comparative loan file reviews, legal and compliance reviews for all fair lending complaints, and a second review committee, which reviews all home mortgage loan applications initially recommended for denial or for approval based on a policy exception. FirstMerit also has a corporate fair lending committee, which is charged with reviewing fair lending compliance and regulatory changes and recommending policy and procedural changes aimed at ensuring compliance with fair lending laws and regulations. FirstMerit's risk-management systems and policies and procedures for assuring compliance with fair lending laws will be implemented at the combined organization.

Consultation with the OCC and the CFPB. The Board has reviewed the FirstMerit and Citizens Evaluations and consulted with the OCC and the Consumer Financial Protection Bureau ("CFPB") with respect to FirstMerit Bank's record of fair lending performance since the FirstMerit Evaluation. The OCC reported, based on its review of supervisory information, that it did not find evidence that FirstMerit Bank engaged in discriminatory conduct during the period before which the CFPB assumed jurisdiction over federal consumer financial laws.³¹ The OCC has indicated that the bank's operations and compliance program are compliant with fair lending and other consumer protection laws. Based on its consultation with the CFPB, the Board is satisfied with FirstMerit's performance, policies, and procedures in the areas reviewed by that agency.

The OCC conducted a pre-merger examination of Citizens Bank in October 2012. The OCC identified specific measures FirstMerit Bank must take to enhance its fair lending compliance program in order to ensure continued fair lending compliance by the combined organization. As a condition of approval, FirstMerit must ensure that FirstMerit Bank is in full compliance with the OCC's requirements within 180 days of the date of this order.

3. HMDA Analysis and Public Comment on the Application

The commenter cited HMDA data and alleged that FirstMerit Bank made fewer conventional home purchase loans to African-American and Hispanic applicants than to white applicants and disproportionately denied applications by minority applicants for conven-

²⁹ The small business lending comprises \$234 million in the Akron MSA, \$388 million in the Cleveland MSA, and \$43 million in the Toledo MSA.

³⁰ The community development lending comprises \$19 million in the Akron MSA, \$101 million in the Cleveland MSA, and \$6 million in the Toledo MSA.

³¹ See 12 U.S.C. § 5481(14).

tional home purchase loans in the Akron and Cleveland MSAs. The commenter further alleged low levels of conventional home purchase lending by FirstMerit Bank to African-American applicants relative to those for white applicants in the Toledo MSA. In addition, the commenter cited HMDA data and alleged that Citizens Bank made fewer conventional home purchase loans to African Americans than to whites in the Akron and Cleveland MSAs.

The Board has reviewed HMDA data from 2010 and 2011 reported by FirstMerit Bank, FirstMerit Mortgage Corporation (“FirstMerit Mortgage”), and Citizens Bank, the most recent publicly available data.³² In response to the comment, the Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns, as well as the subset of that data related specifically to conventional home purchase loans, which was the subject of the public comment received on the proposal. Within those data sets, the Board focused its review on the races and ethnicities highlighted by the public comment, in this case, African Americans and Hispanics. The Board considered not only the MSAs addressed in the public comment (Akron, Cleveland, and Toledo), but also the MSAs in which FirstMerit Bank and Citizens Bank have their headquarters and all of the states in which FirstMerit Bank, FirstMerit Mortgage, and Citizens Bank originate HMDA-reportable loans.

With respect to FirstMerit Bank and Citizens Bank, the Board confirmed the levels of conventional home purchase loans and denial disparity ratios associated with conventional home purchase loans noted by the commenter. In addition, the Board’s analysis for all HMDA-reportable loans revealed small differences in the percentages of loan applications received and loans originated by FirstMerit Bank and FirstMerit Mortgage for applicants residing in majority-minority tracts³³ in the Cleveland MSA as compared to the percentages of loan applications received and loans originated by all HMDA reporters for applicants residing in majority-minority tracts in the Cleveland MSA. The Board did not find any significant disparities with respect to Citizens Bank. The Board communicated its findings with respect to FirstMerit to the OCC and the CFPB.

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. Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether FirstMerit Bank and FirstMerit Mortgage have excluded or denied credit to any group on a prohibited basis.³⁴

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by FirstMerit Bank and Citizens Bank with fair lending laws and regulations. The Board also has

³² FirstMerit Mortgage, a wholly owned mortgage banking subsidiary of FirstMerit Bank, services the loans it originates as well as those originated by FirstMerit Bank.

³³ In this case, majority-minority tracts are those where a majority of the population is African American and/or Hispanic.

³⁴ 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 (the reasons most frequently cited for a credit or higher credit cost) are not available from HMDA data.

consulted with the OCC and the CFPB about this proposal, including the record of FirstMerit Bank with fair lending laws and regulations since the FirstMerit Evaluation.

With respect to the specific HMDA data on conventional home mortgages cited by the commenter, FirstMerit provided information on the nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). With respect to the small differences in the percentages of loan applications received and loans originated by FirstMerit Bank and FirstMerit Mortgage identified in the Board's analysis for applicants residing in majority-minority tracts in the Cleveland MSA as compared to the aggregate, the Board has concluded that these differences alone would not be enough to preclude approval. FirstMerit Bank branches are accessible to majority-minority areas in the Cleveland MSA, with four branches in majority-minority tracts.³⁵ FirstMerit Bank has not attempted to adjust its assessment area to exclude majority-minority areas for CRA purposes, but rather has included the entire Cleveland MSA into its assessment area. FirstMerit also has provided the Board with detailed information on its training, marketing, and advertising, and centralized underwriting programs reflecting its commitment to the prevention of prescreening, discouragement, or exclusion of credit applications on a prohibited basis. Based on its review of information to date, the Board has not found evidence that FirstMerit has engaged in discrimination or other illegal credit practices.

Based on this information, as well as the views of the CFPB and the OCC on FirstMerit Bank's record of fair lending performance, and considering the fair lending policies and procedures and compliance record of FirstMerit Bank, the Board concludes that FirstMerit Bank's fair lending record is consistent with approval and that the HMDA disparities cited by the commenter and identified by the Board are not a barrier to approval.

4. Convenience and Needs of Communities to be Served by the Combined Organization

The Board has considered the extent to which the proposal would benefit the customers of FirstMerit Bank, Citizens Bank, or both. Such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of either of the parties.

FirstMerit represents that the proposal would result in cost savings for the combined organization by reducing its funding costs and consolidating redundant functions, including Citizen's reliance on third-party vendors to supply services to its customers. The Board has considered that decreased funding costs could result from the fact that FirstMerit would redeem Citizens Bank's TARP shares with alternative funding, allowing it to lower its debt service; Citizens' stable base of short-term deposits would allow FirstMerit to reduce its reliance on more expensive wholesale funding sources; and the combined organization would pay lower FDIC insurance assessments.

FirstMerit also has stated that it would be able to use its existing infrastructure to perform a variety of services that Citizens currently contracts with third party vendors to provide. In addition to the projected cost savings, FirstMerit represents that, by providing certain services in-house, they would have the ability to provide more customization than is currently offered by Citizens Bank through third parties. For example, FirstMerit has represented that it would assume responsibilities from third-parties that issue credit cards, provide international trade letters of credit, and originate mortgages for Citizens' customers on Citizens' behalf.

³⁵ This information is based on census demographic data for the year 2012 that were updated in June 2012 using 2006-2010 ACS and Census 2010 SF1-based data.

The merger also would extend the branch and ATM footprints of FirstMerit Bank and Citizens Bank to cover portions of five states. The resulting network would be contiguous over a broader geographic area than is currently available to customers of either institution. Consumers that commute to work and businesses located across multiple geographic areas are likely to be the primary beneficiaries of the larger branch network.

Finally, FirstMerit represents that, as a result of the merger, Citizens' customers would have access to a variety of consumer and business services that are not currently offered by Citizens. Citizens' retail customers would have access to private banking, wealth management, and additional lending products. As a result of the merger, Citizens' small business customers would gain access to a variety of financial services such as mobile banking and merchant services, commercial purchasing cards, and import/export services. FirstMerit also represents that it would expand Citizens' commercial and industrial lending business and hire additional commercial lending officers at Citizens Bank branches, and that, as a result of the merger, Citizens' business customers would have access to larger loans.

5. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by FirstMerit, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of FirstMerit Bank's and Citizens Bank's mortgage lending operations and compliance programs, review of examination reports, and consultations with the OCC and the CFPB, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board encourages FirstMerit Bank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."³⁶

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

³⁶ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

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

that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁸

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, FirstMerit would have approximately \$24 billion in consolidated assets and, by any of a number of alternative measures of firm size, FirstMerit would be between the 50th and 75th largest U.S. insured depository organization. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, FirstMerit's intrafinancial assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, 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 the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by FirstMerit with all the conditions imposed in this order and the commitments made to the Board in connection with the application, including receipt 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.

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

³⁹ The public commenter requested that the Board hold a public 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 rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

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 Cleveland, acting pursuant to delegated authority.

By order of the Board of Governors, effective March 22, 2013.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Trustmark Corporation Jackson, Mississippi

Order Approving the Acquisition of a Bank Holding Company and the Merger of Bank Holding Companies
FRB Order No. 2013-1 (January 24, 2013)

Trustmark Corporation (“Trustmark”), Jackson, Mississippi, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire BancTrust Financial Group, Inc. (“BancTrust”), and thereby indirectly acquire BancTrust’s subsidiary bank, BankTrust (“BankTrust”), both of Mobile, Alabama. In addition, Trustmark has requested the Board’s approval under section 3 of the BHC Act to merge with BancTrust.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (*77 Federal Register* 42312 (July 18, 2012)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Trustmark, with total consolidated assets of approximately \$9.9 billion, is currently a bank holding company that owns all of Trustmark Bank and The Somerville Bank & Trust Company, Somerville, Tennessee (“Somerville Bank”). Trustmark is the 102nd largest depository organization in the United States, controlling approximately \$8.0 billion in deposits. Trustmark Bank operates branches in Mississippi, Florida, Tennessee, and Texas. In Florida, Trustmark Bank is the 80th largest insured depository institution, controlling deposits of approximately \$444 million, which represent about 0.1 percent of the total amount of deposits of insured depository institutions in that state.³ Somerville Bank operates only in Tennessee.

BancTrust, with total consolidated assets of approximately \$2.0 billion, is the 358th largest depository organization in the United States, controlling \$1.8 billion in deposits. BancTrust controls BankTrust, which has operations in Alabama and Florida. In Florida, BankTrust is the 154th largest insured depository institution, controlling about \$178 million in depos-

¹ 12 U.S.C. § 1842.

² After the transaction, Applicant plans to merge BankTrust with and into Trustmark’s subsidiary depository institution, Trustmark National Bank (“Trustmark Bank”), Jackson, Mississippi. The Office of the Comptroller of the Currency (“OCC”) has approved the proposed merger pursuant to the Bank Merger Act and the National Bank Act. 12 U.S.C. § 1828(c) and 12 U.S.C. § 215a.

³ Data are as of June 30, 2012. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

its, which represent about 0.04 percent of the total amount of deposits of insured depository institutions in the state.

On consummation of this proposal, Trustmark would become the 93rd largest depository organization in the United States with consolidated assets of approximately \$11.9 billion, controlling \$9.8 billion in deposits. Trustmark Bank would become the 60th largest insured depository institution in Florida, controlling approximately \$622 million in deposits, which represent approximately 0.14 percent of the total amount of deposits of insured depository institutions in the state.

Interstate and Deposit Cap Analysis

Section 3 of the BHC Act imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company (“BHC”) that is well capitalized and well managed⁴ to acquire a bank located in a state other than the home state of the BHC without regard to whether the transaction is prohibited under state law. However, this section further provides that the Board may not approve an application that would permit an out-of-state BHC to acquire a bank in a host state that has not been in existence for the lesser of the state statutory minimum period of time or five years.⁵ In addition, the Board may not approve an application by a BHC to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the BHC, and the applicant controls or would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States (“nationwide deposit cap”).⁶

For purposes of the BHC Act, the home state of Trustmark is Mississippi and BankTrust’s home state is Alabama.⁷ Trustmark is well capitalized and well managed under applicable law. Alabama has a five-year minimum age requirement,⁸ and BankTrust has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of deposits of insured depository institutions in the United States is \$9.9 trillion. On consummation of the proposed transaction, Trustmark would control less than 1 percent of the total amount of deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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

⁴ The standard was changed from adequately capitalized and adequately managed to well capitalized and well managed by section 607(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(d)(1)(A).

⁵ 12 U.S.C. § 1842(d)(1)(B).

⁶ 12 U.S.C. § 1842(d)(2)(A). For a detailed discussion of the nationwide deposit cap, see *Bank of America Corporation/LaSalle*, 93 *Federal Reserve Bulletin*, 109, 109-110 (2007); *Bank of America Corporation/Fleet*, 90 *Federal Reserve Bulletin* 217, 219-220 (2004).

⁷ A bank holding company’s home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(c). 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. 12 U.S.C. § 1841(o)(4)-(7), 1842(d)(1)(A), and 1842(d)(2)(B).

⁸ Ala. Code § 15-13B-6(d) (*LexisNexis* 2010).

banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁹ The Board has considered the competitive effects of the proposal in light of all the facts of record. Trustmark and BancTrust compete directly in two banking markets in Florida: The Fort Walton and Panama City banking markets.¹⁰

The Board has reviewed the competitive effects of the proposal in the Fort Walton and Panama City banking markets. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in the depository institutions in the markets (“market deposits”) controlled by Trustmark and BancTrust, the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Merger Competitive Review Guidelines (“DOJ Bank Merger Guidelines”),¹¹ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the DOJ Bank Merger Guidelines in both banking markets. On consummation of the proposal, one market would remain unconcentrated and the other market would remain moderately concentrated, as measured by the HHI. The change in HHI in both markets would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In both banking markets, numerous competitors would remain.¹²

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal was not likely to 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.

⁹ 12 U.S.C. § 1842(c)(1).

¹⁰ The Fort Walton Area banking market is defined as: Okaloosa and Walton Counties; and the western half of Holmes County, including the town of Ponce de Leon, all in Florida. The Panama City Area banking market is defined as: Bay and Gulf Counties; and the southern half of Washington County, including the towns of Vernon and Wausau, all in Florida.

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

¹² Based on data as of June 30, 2012, Trustmark Bank is the 14th largest insured depository institution in the Fort Walton Area banking market, controlling deposits of \$123 million, representing approximately 2.89 percent of market deposits. BancTrust is the 11th largest insured depository institution, controlling deposits of \$136 million, representing 3.20 percent of market deposits. On consummation, Trustmark Bank would become the 8th largest insured depository institution, controlling deposits of \$260 million, representing 6.09 percent of market deposits. As a result, the HHI would increase by 18 points to 812, and 22 competitors would remain in the market.

In the Panama City Area market, Trustmark Bank is the 2nd largest insured depository institution, controlling deposits of \$320 million, representing 12.19 percent of market deposits. BancTrust is the 12th largest insured depository institution, controlling deposits of \$41 million, representing 1.58 percent of market deposits. Upon consummation, Trustmark Bank would remain the 2nd largest insured depository institution, controlling deposits of \$362 million, representing 13.8 percent of market deposits. As a result, the HHI would increase by 39 points, to 1356, and 17 competitors would remain in the market.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the two banking markets in which Trustmark and BancTrust compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Other Section 3(c) Considerations

Section 3(c) of the BHC Act requires the Board to take into consideration a number of other factors in acting on bank acquisition applications. These factors include: the financial and managerial resources (including consideration of the competence, experience, and integrity of officers, directors, and principal shareholders) and future prospects of the company and banks concerned; effectiveness of the company in combatting money laundering; the convenience and needs of the community to be served; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

The Board has considered all these factors and, as described below, has determined that all considerations are consistent with approval of the application. The review was conducted in light of all the facts of record, including supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Trustmark, and public comments received on the proposal.

A. Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary 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. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding on the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Trustmark, Trustmark Bank, and Somerville Bank are well capitalized and would remain so on consummation of the proposed transaction, which is a bank holding company merger, structured as an exchange of shares. Trustmark would issue new shares of common stock to complete the transaction. Trustmark is in stable financial condition, and the asset quality and earnings of both Trustmark Bank and Somerville Bank are consistent with approval. On a pro forma basis, the acquisition of BancTrust would not adversely impact Trustmark's operations financially. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Trustmark, Trustmark Bank, and Somerville Bank, including assessments of their management, risk management systems, and operations. Trustmark, Trustmark Bank, and Somerville Bank are considered to be well managed, and their boards of directors and senior management are considered experienced and capable. Following the merger, BancTrust and BankTrust would be integrated into

Trustmark's operations and governed by Trustmark's risk management, corporate governance, and compliance policies and procedures. Trustmark's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior management of Trustmark, Trustmark Bank, and Somerville Bank, and the risk-management program of Trustmark, would not change as a result of the proposal. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law, including anti-money-laundering laws.

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 are consistent with approval, as are the other supervisory factors.

B. Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").¹³ 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,¹⁴ 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.¹⁵

The Board has considered all the facts of record, including reports of examination of the CRA performance of Trustmark Bank, Somerville Bank, and BankTrust, data reported by Trustmark Bank under the Home Mortgage Disclosure Act ("HMDA"),¹⁶ other information provided by Trustmark, confidential supervisory information, and one public comment received on the proposal. The commenter objected to the proposal on the basis of Trustmark Bank's mortgage lending record. The commenter highlighted disparities in denial rates to African American and Hispanic applicants for conventional home purchase or refinance loans, relative to those for white applicants in the Jackson, Mississippi, Metropolitan Statistical Area ("MSA"). In addition, the commenter noted disparities in the level of conventional home purchase loans made to African American applicants as compared to white applicants in the Gulfport-Biloxi MSA, the Memphis MSA, and the Houston MSA.

1. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.¹⁷ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.¹⁸ An institution's most recent CRA performance evaluation is a particularly impor-

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

¹⁴ 12 U.S.C. § 201(b).

¹⁵ 12 U.S.C. § 2903.

¹⁶ 12 U.S.C. § 2801 *et seq.*

¹⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

¹⁸ 12 U.S.C. § 2906.

tant 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.

CRA Performance of Trustmark Bank. Trustmark Bank was assigned an “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of April 12, 2010 (“Trustmark Evaluation”). In general, examiners concluded that Trustmark Bank had an excellent record of lending inside its assessment areas by number and dollar amount of loans and that its community development lending performance was excellent. In particular, examiners stated that Trustmark Bank used flexible and innovative loan products. The bank received a “high satisfactory” rating on the lending test and “outstanding” ratings on both the investment and service tests.¹⁹

CRA Performance of Somerville Bank. Somerville Bank was assigned a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation (“FDIC”), as of August 11, 2008 (“Somerville Evaluation”).²⁰ In general, examiners concluded that Somerville Bank exhibited a reasonable penetration of lending among individuals of different income levels and had an excellent record of small business lending.

CRA Performance of BankTrust. BankTrust received an overall “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of April 19, 2010 (“BankTrust Evaluation”).²¹ The bank received “high satisfactory” ratings on the lending and service tests and a “needs to improve” rating on the investment test. Examiners reported that BankTrust’s lending performance reflected a good record of serving the credit needs of the most economically disadvantaged assessment areas, low-income individuals, and very small businesses consistent with safe and sound business practices.

2. HMDA Analysis and Fair Lending Record

The Board has considered the records of Trustmark Bank in complying with fair lending and other consumer protection laws. The commenter cited HMDA data and alleged that Trustmark Bank disproportionately denied applications by minority applicants for conventional home purchase or refinance loans in the Jackson, Mississippi, MSA. In addition, the commenter alleged disparities in the level of conventional home purchase loans made to African American applicants compared to white applicants in the Gulfport, Memphis, and Houston markets.

The Board has reviewed HMDA data from 2010 and 2011 reported by Trustmark Bank, focusing on 2011, the most recent publicly available data.²² The HMDA data indicate that the ratio of the denial rate for African American or Hispanic applicants to the denial rate

¹⁹ The evaluation period for the Lending Test in the Trustmark Evaluation was January 1, 2006, through December 31, 2009, except for community development loans, which had an evaluation period from July 12, 2006, through April 12, 2010. The evaluation period for the Investment and Service Tests was from July 12, 2006, through April 12, 2010.

²⁰ The period for home mortgage data evaluation in the Somerville Evaluation was January 1, 2006, through March 31, 2008 and the period of small business loan origination evaluation was July 23, 2007 through July 23, 2008.

²¹ The period for mortgage data evaluated in the BankTrust Evaluation was January 1, 2008, through December 31, 2009. The period for small business data evaluated was January 1, 2009, through December 31, 2009, with a sampling of loans from 2008. The period of community development loans evaluated was February 22, 2007, through April 19, 2010.

²² The Board reviewed HMDA data for Trustmark Bank in its assessment areas on a combined basis (“the combined assessment areas”) for both loan denial disparities and loan penetration and separately reviewed portions of the bank’s assessment areas located within the specific metropolitan areas cited by the commenter: Jackson, Mississippi, Gulfport-Biloxi, Mississippi, Memphis, Tennessee, and Houston, Texas, for the concerns raised by the commenter relevant to a specific MSA.

for white, non-Hispanic applicants was higher for the bank than for the aggregate of all HMDA reporters in the Jackson MSA and in the bank's combined assessment areas. In addition, Trustmark Bank's number of originations from African American applicants as a percentage of its total HMDA originations in 2011 was lower than the aggregate's percentage in the portion of the bank's assessment areas in the Gulfport-Biloxi MSA, the Memphis MSA, and the Houston MSA, although the bank's percentage of originations to African American applicants was higher than the aggregate's in the bank's combined assessment areas in 2011.

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. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Trustmark Bank has excluded or denied credit to any group on a prohibited basis.²³

Because of the limitations of HMDA data, the Board has considered these data and taken into account other information, including examination reports that provide on-site evaluations of compliance by Trustmark Bank with fair lending laws and regulations. The Board also has consulted with the OCC about this proposal, including the record of Trustmark Bank with fair lending laws and regulations since the Trustmark Evaluation.

The Trustmark Evaluation. As described in the Trustmark Evaluation, above, Trustmark Bank provides significant levels of community development loans and qualified community development investments. In the Trustmark Evaluation, examiners noted that service delivery systems were readily accessible to all portions of the assessment areas, commensurate with the size and scope of the operations of the bank. Examiners found that Trustmark Bank provided a relatively high level of community development services that were responsive to a variety of community development needs.

Examiners stated that the bank had responded to other community credit needs, such as affordable housing for LMI geographies and borrowers, through extensive transactions associated with community development loans, investments, and services.²⁴ With respect to community development services, Trustmark Bank employs a full-time Community Outreach Coordinator who is responsible for providing financial education classes to LMI individuals, working with the bank's originators to increase lending to LMI individuals, and working with housing-related entities to educate consumers and promote homeownership.

The OCC assigned Trustmark Bank a rating of "High Satisfactory" for the Lending Test, noting that the bank's lending activity was excellent. Examiners found that Trustmark Bank's geographic distribution of home mortgage and small business loans was adequate and that the distribution of home mortgage loans by income level of the borrower and the distribution of loans by size of business were good. Examiners determined that Trustmark

²³ 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 (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

²⁴ Trustmark Bank's performance in Mississippi was given considerably more weight than its performance in other states that are part of its assessment area to reflect the fact that 82 percent of the bank's deposits were booked in branches in Mississippi.

Bank had an excellent record of lending within its assessment areas by number and dollar amount of loans. Examiners found that Trustmark Bank's community development lending performance was excellent and highlighted the bank's origination of more than \$97 million of community development loans in Mississippi. Examiners also stated that Trustmark Bank's use of flexible and innovative loan products had a positive impact on the bank's performance under the Lending Test.

Examiners assigned Trustmark Bank a rating of "Outstanding" for the Investment Test and noted the bank's excellent level of qualified community development investments. In particular, examiners highlighted qualified investments, grants, and donations totaling \$36.3 million in the bank's full-scope assessment areas in Mississippi. Most of those investments provided for: the construction, repair, and expansion of schools serving primarily LMI students; funding home ownership and rental housing for LMI households; and a project to revitalize and stabilize a low-income area.

Trustmark Bank's efforts since the 2010 CRA Evaluation. Trustmark states that Trustmark Bank reported almost 14,000 HMDA, small business and small farm loans totaling approximately \$2 billion for 2011. In addition, Trustmark indicated that the bank made 50 community development loans totaling \$65 million during 2010 and 35 community development loans totaling \$59 million in 2011. Trustmark also reported that Trustmark Bank made approximately \$54 million in qualified community development investments from July 10, 2010, through July of 2012, including investments in GNMA and FNMA mortgage-backed securities, low-income-housing tax credits, new market tax credit projects, and contributions to nonprofit organizations serving LMI individuals.

Trustmark Bank's Fair Lending Program. The Board also considered information about Trustmark Bank's compliance and risk management systems and the steps it has taken to ensure compliance with fair lending laws. Trustmark Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Trustmark Bank's fair lending program includes a separate fair lending department led by a full-time person, a second review process, various policies and procedures,²⁵ training, and internal fair lending risk assessments. Trustmark Bank also has a second review committee, which reviews all home mortgage loan applications initially recommended for denial or for approval based on a policy exception. The bank completes quarterly reviews of compliance with Trustmark Bank's fair lending policies. Trustmark's risk-management systems and policies and procedures for assuring compliance with fair lending laws will be implemented at the combined organization.

Consultation with the OCC. As previously noted, the Board has reviewed the Trustmark Evaluation and consulted with the OCC with respect to Trustmark's record of fair lending performance since the Trustmark Evaluation. In its review, the OCC relied in large part on data gathered as part of its supervisory process to satisfy it that Trustmark did not engage in discriminatory conduct. The OCC did not find evidence that indicates the presence of prohibited discrimination or other illegal credit practices by Trustmark. In addition, the OCC has indicated that the bank's operations and compliance program are compliant with fair lending and other consumer protection laws.

²⁵ To assure underwriting consistency, the bank's centralized underwriting center consults a database of all applications that were declined or approved with a policy exception before permitting a new application with a policy exception to be declined or approved. Trustmark Bank's Retail Credit Administration and Fair Lending Department performs an ongoing Fair Lending Risk Assessment designed to identify areas of inherent risk associated with products, delivery channels, and disparity in decline ratios. This assessment is reviewed and changed as products, branches, and underwriting guidelines change, and as fair lending complaints and other pertinent issues arise.

3. Convenience and Needs of Communities Served by BankTrust

Trustmark represents that the proposal would benefit the convenience and needs of the communities currently served by BankTrust in several ways. Primarily, Trustmark asserts that the proposed transaction would strengthen BankTrust and enable it to be a stronger and more active participant in the markets it serves. Specifically, Trustmark indicated that the merged bank would have expanded lending capacity and a higher legal lending limit and that no broad or material categories of BankTrust products would be eliminated. In addition, consummation of the proposal would provide access to a larger ATM network to current customers of Trustmark Bank and BankTrust and would provide BankTrust customers access to Trustmark Bank's expertise as a Small Business Administration Preferred Lender.

4. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Trustmark, and confidential supervisory information. Based on the Board's analysis of the HMDA data, evaluation of Trustmark Bank's mortgage lending operations and compliance programs, review of examination reports, and consultations with the OCC, the Board believes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application. The Board encourages Trustmark Bank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

C. Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."²⁶

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

²⁶ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

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

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

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Trustmark would have assets well below the threshold established by the Board for transactions that are presumed to raise financial stability concerns absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such other risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness with the resulting firm generally ranking outside, and often well outside, of the top 100 U.S. financial institutions in terms of those metrics. The resulting organization would not engage in complex or international activities, nor would it provide critical services whose disruption would impact the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Conclusion on Section 3(c) Factors

Based on all the facts of record, including those described above, the Board has determined that all of the factors it must consider under section 3(c) of the BHC Act are consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has approved the proposed transaction.²⁹ 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.³⁰ The Board's approval is specifically conditioned on compliance by Trustmark with all the commitments made to and relied on by the Board in connection with the application and on receipt of all other regulatory approvals. For purposes of this action, the

²⁹ The commenter requested that the Board extend the comment period. The Board believes that the record in this case does not warrant postponing its consideration of the proposal. During the applications process, the Board accumulated a significant record, including reports of examination, supervisory information, public reports and information, and public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's processing rules establish time periods for consideration and action on acquisition proposals. Moreover, as discussed above, the CRA requires the Board to consider the existing record of performance of an organization and does not require an organization to enter into contracts or agreements with interested parties to implement its CRA programs. For the reasons discussed above, the Board believes that commenter has had ample opportunity to submit views, and in fact, the commenter has provided substantial 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 concludes that granting an extension of the comment period is not warranted.

³⁰ The 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 comment 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.

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 after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Atlanta, acting pursuant to delegated authority.

By order of the Board of Governors, effective January 24, 2013.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under International Banking Act

NongHyup Bank
Seoul, Republic of Korea

Order Approving Establishment of a Branch and a Representative Office
FRB Order No. 2013-2 (January 28, 2013)

NongHyup Bank (“NH Bank”), Seoul, Republic of Korea, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under sections 7(d) and 10(a) of the IBA¹ to establish a state-licensed branch and a representative office (“U.S. offices”), both 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 branch or representative office in the United States.

Notice of the applications, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, April 19, and July 30, 2012). The time for filing comments has expired, and all comments received have been considered.

NH Bank, with total consolidated assets of approximately \$175 billion, is a newly chartered banking entity resulting from an internal corporate restructuring of National Agricultural Cooperative Federation (“NACF”), also of Seoul.² NH Bank is wholly owned by NH Financial Group Inc. (“NHFG”) which, in turn, is wholly owned by NACF.³

NHFG and NH Bank were established as of March 2, 2012, pursuant to an amendment to the Korean National Agricultural Cooperative Federation Act, which separated NACF’s financial and non financial activities. On that date, by operation of Korean law, NACF’s credit and banking businesses were transferred to NH Bank. NH Bank assumed NACF’s banking business in its entirety and succeeded to all of NACF’s rights and obligations associated therewith. As of year-end 2011, NH Bank would have been the fourth largest

¹ 12 U.S.C. §§ 3105(d) and 3107(a).

² Asset data is as of September 30, 2012.

³ NACF is a special-purpose entity created by the Korean government that acts as an umbrella organization for Korean agricultural cooperatives. NACF is entirely owned by its member agricultural cooperatives. No shareholder, directly or indirectly, owns 5 percent or more of the voting shares of NACF.

banking institution in Korea based on asset size.⁴ NH Bank engages in commercial banking activities through its head office and approximately 1,172 branch offices in Korea, including general commercial, agricultural and credit card lending, trust activities, and deposit taking. In the United States, NACF operates a representative office in New York City and a nonbank company in Cerritos, California.⁵ Upon the establishment of the proposed branch, NACF, NHFG, and NH Bank would all be qualifying foreign banking organizations under Regulation K.⁶

The proposed representative office would assume the current business of NACF's existing representative office. When NH Bank establishes the proposed branch, the proposed representative office would be closed. The proposed representative office would act as liaison between NH Bank and its customers in the United States and would engage in other representational activities, including soliciting purchasers of loans and parties to contract with NH Bank for the servicing of NH Bank loans; and conducting research.⁷ The proposed representative office would also solicit loans in principal amounts of \$250,000 or more and, in connection with those loan proposals, would assemble credit information, make property inspections and appraisals of property, secure title information, and prepare loan applications and make recommendations. The proposed branch would provide remittance/money transmittal services for existing NH Bank customers in Korea; trade finance services, such as letters of credit and bankers acceptances, on behalf of NH Bank and its Korean branches for Korean companies and U.S. companies seeking to do business with Korea; and financing for Korean and other companies with subsidiaries or branches in the United States.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch or a representative office, the Board must consider whether the foreign bank (1) engages directly in the business of banking outside the United States; (2) has furnished to the Board the information it needs to assess the application adequately; and (3) is subject to comprehensive supervision on a consolidated basis by its home country supervisors.⁸ The Board also considers additional standards set forth in the IBA and Regulation K.⁹

⁴ This ranking is based on the asset size of NACF's banking business prior to the restructuring and includes trust accounts.

⁵ See e.g., *National Agricultural Cooperative Federation*, 96 *Federal Reserve Bulletin* B27 (2010). Through a Korean nonbanking subsidiary, NACF has an indirect U.S. subsidiary that engages primarily in agricultural market research, marketing Korean agricultural products, and other nonbanking activities. NACF has similar establishments in Tokyo and Beijing. NACF would hold its indirect U.S. subsidiary pursuant to section 2(h)(2) of the Bank Holding Company Act. 12 U.S.C. § 1841(h)(2).

⁶ 12 CFR 211.23(a).

⁷ 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).

⁸ 12 U.S.C. §§ 3105(d)(2) and 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.

⁹ See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: 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

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.¹⁰ This exception provides that, if the Board is unable to find that a foreign bank seeking to establish a branch, agency, or commercial lending company is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve the application provided that: (i) the appropriate authorities in the home country of the foreign bank are actively working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.¹¹ This is the standard applied in this case. In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.¹² The Board also may take into account whether the home country of the foreign bank is developing a legal regime to address money laundering or is participating in multilateral efforts to combat money laundering.¹³

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

With respect to supervision by home country authorities, the following factors have been taken into consideration. NH Bank is subject to oversight by a number of Korean government agencies, including the Financial Supervisory Service (“FSS”), in a manner different from other Korean commercial banks.¹⁴ As NH Bank is a specialized bank that is part of an agricultural cooperative, several other governmental agencies, in addition to the FSS, participate in the supervision of NH Bank and in the oversight of its parent companies. These include the Ministry for Food, Agriculture, Forestry, and Fisheries (“Food and Agriculture Ministry”); the Ministry of Strategy and Finance; and the Board of Audit and Inspection. Under applicable Korean law, the Financial Services Commission, whose executive body is the FSS, must take into account the unique objectives of NH Bank and consult with the Food and Agriculture Ministry before imposing sanctions on or granting authorizations to the bank. NH Bank’s direct parent, NHFG, is supervised as a financial holding company by the FSS, while NH Bank’s ultimate parent, NACF, is supervised by the Food and Agriculture Ministry, which inspects each NACF unit over the course of a three-year schedule. Additionally, NACF is subject to periodic on-site examination of all its businesses by the Korean National Assembly’s Committee of Agriculture, Forestry and Ocean in connection with its oversight of the Korean agricultural industry. NH Bank is subject to lower liquidity requirements than commercial banks and, in connection with its formation, was granted temporary authority to extend credit to other business units in the NACF group.

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 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).

¹⁰ 12 U.S.C. § 3105(d)(6).

¹¹ 12 U.S.C. § 3105(d)(6)(A).

¹² 12 U.S.C. § 3105(d)(6)(B).

¹³ *Id.*

¹⁴ The FSS is the executive body of the Financial Services Commission (“FSC”), which is responsible for promulgating supervisory regulations, making policy decisions about supervision, and imposing sanctions on Korean financial institutions. The FSS is responsible for the supervision of Korean financial institutions, including overseas offices, pursuant to regulations promulgated by the FSC.

The structure of NH Bank is new and was designed to permit more effective supervision of the banking operations of the NACF organization. This restructuring has caused a realignment of the regulatory structure applicable to NH Bank as well. This regulatory structure involves a combination of agencies and a balancing of missions that is different than the regulatory structure previously reviewed by the Board for other Korean banks.¹⁵ The relevant Korean authorities are working together to fully implement a supervisory framework that will effectively supervise NH Bank on a worldwide consolidated basis.

Korea is a member of the Financial Action Task Force (“FATF”) and subscribes to its recommendations regarding measures to combat money laundering and international terrorism. In accordance with those recommendations, Korea 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 Korea, and financial services businesses are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. NH Bank has policies and procedures to comply with those laws and regulations, and these policies and procedures are monitored by governmental entities responsible for anti-money laundering compliance.

Based on all the facts of record, it has been determined that NH Bank’s home country supervisory authorities are actively working to establish arrangements for the consolidated supervision of NH Bank. Considerations relating to the steps taken by NH Bank and its home jurisdiction to combat money laundering are consistent with approval under this standard.

The additional standards set forth in section 7 of the IBA and Regulation K also have been taken into account.¹⁶ The FSS has no objection to the establishment of the proposed branch and representative office.

The financial and managerial factors in this case have been considered and are consistent with approval of the proposed offices. Korea’s risk-based capital standards are consistent with those established by the Basel Capital Accord. NH Bank’s capital is in excess of the minimum levels that would be required of a U.S. banking organization. Managerial and other financial resources of NH Bank are consistent with approval, and NH Bank appears to have the experience and capacity to support the proposed branch. In addition, NH Bank has established controls and procedures for the proposed U.S. offices to ensure compliance with U.S. law.

With respect to access to information about NH Bank’s operations, the restrictions on disclosure in relevant jurisdictions in which NH Bank operates have been reviewed and relevant government authorities have been communicated with regarding access to information. NH Bank and NACF have committed to make available to the Board such information on the operations of NH 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.¹⁷ To the extent that providing such information to the Board may be prohibited by law or otherwise, NH Bank and NACF 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

¹⁵ See *Shinhan Financial Group Co., Ltd.*, 90 *Federal Reserve Bulletin* 85 (2004); *Woori Finance Holdings Co., Ltd.*, 89 *Federal Reserve Bulletin* 436 (2003).

¹⁶ See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2).

¹⁷ NACF previously provided this commitment to the Board in connection with its application to establish a representative office in 2010. See *supra*, note 4.

addition, subject to certain conditions, the FSC and FSS may share information on NH 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 NH Bank and NACF have provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Act amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.¹⁸ 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 NH Bank in its home country, the scope of NH 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 NH Bank in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by NH Bank and NACF, NH Bank's applications to establish the proposed U.S. offices are 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.¹⁹ Should any restrictions on access to information on the operations or activities of NH Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by NH Bank or its affiliates with applicable federal statutes, the Board may require termination of any of NH Bank's direct or indirect activities in the United States. Approval of the applications also is specifically conditioned on compliance by NH Bank and NACF with the conditions imposed in this order and the commitments made to the Board in connection with this application.²⁰ For purposes of this action, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective January 28, 2013.

Margaret McCloskey Shanks
Deputy Secretary of the Board

¹⁸ 12 U.S.C. § 3105(d)(3)(E).

¹⁹ 12 CFR 265.7(d)(12).

²⁰ The Board's authority to approve the establishment of the proposed representative office and branch parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed offices of NH Bank in accordance with any terms or conditions that it may impose.