



## Legal Developments: Fourth Quarter, 2013

### Orders Issued Under Bank Holding Company Act

#### Orders Issued Under Section 3 of the Bank Holding Company Act

Ameris Bancorp  
Moultrie, Georgia

*Order Approving the Acquisition of a Bank Holding Company*  
*FRB Order No. 2013-12 (December 6, 2013)*

Ameris Bancorp (“Ameris”), Moultrie, Georgia, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to acquire The Prosperity Banking Company (“Prosperity”) and thereby indirectly acquire its subsidiary bank, Prosperity Bank (“Prosperity Bank”), both of St. Augustine, Florida. Immediately following the proposed acquisition, Prosperity Bank would be merged into Ameris’s subsidiary bank, Ameris Bank, Moultrie, a state nonmember bank.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 35033 (2013)).<sup>3</sup> The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Ameris, with consolidated assets of approximately \$2.8 billion, is the 261st largest insured depository organization in the United States, controlling approximately \$2.4 billion in consolidated deposits.<sup>4</sup> Ameris Bank operates in Alabama, Florida, Georgia, and South Carolina. Ameris Bank is the 14th largest depository institution in Georgia, controlling deposits of approximately \$1.6 billion, and is the 88th largest depository institution in Florida with approximately \$373.3 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of these states.<sup>5</sup> In addition, Ameris Bank is the 36th largest depository institution in South Carolina with approximately \$304.8 million in deposits, and the 60th largest in Alabama with approximately \$186.4 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> The merger of Prosperity Bank into Ameris Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) under the Bank Merger Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on November 6, 2013 (Letter from Jeffrey L. Povlak, Assistant Regional Director of FDIC Atlanta Regional Office, to Jody L. Spencer, Rogers & Hardin LLP (Nov. 6, 2013)).

<sup>3</sup> 12 CFR 262.3(b).

<sup>4</sup> Asset and nationwide deposit-ranking data are as of June 30, 2013, unless otherwise noted.

<sup>5</sup> State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

Prosperity, with total consolidated assets of \$753 million, controls Prosperity Bank, which operates in Florida. Prosperity Bank is the 72nd largest insured depository institution in Florida, controlling deposits of approximately \$490 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Ameris would become the 215th largest depository organization in the United States, with total consolidated assets of approximately \$3.6 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Ameris would have total consolidated deposits of approximately \$2.9 billion. In Florida, Ameris would become the 51st largest depository organization, controlling deposits of approximately \$868.8 million, which represent less than 1 percent of the total deposits of insured depository institutions in that 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.<sup>6</sup> 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.<sup>7</sup> 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 bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.<sup>8</sup>

For purposes of the BHC Act, the home state of Ameris is Georgia,<sup>9</sup> and Prosperity is located in Florida.<sup>10</sup> Ameris is well capitalized and well managed under applicable law. Georgia law has no minimum requirements for period of operation,<sup>11</sup> and Prosperity 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 \$10.4 trillion. On consummation of the proposed transaction, Ameris 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.

<sup>6</sup> 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).

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>8</sup> 12 U.S.C. § 1842(d)(2)(A).

<sup>9</sup> 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.

<sup>10</sup> 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); 1842(d)(1)(A); and 1842(d)(2)(B).

<sup>11</sup> See GA. CODE § 7-1-530 (2013) (permits interstate acquisitions but does 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.<sup>12</sup>

Ameris and Prosperity compete directly in the Jacksonville Area, Florida banking market.<sup>13</sup> The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market (“market deposits”) controlled by Ameris and Prosperity;<sup>14</sup> 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 Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>15</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for this market. On consummation of the proposal, the banking market would remain highly concentrated, as measured by the HHI, and numerous competitors would remain.<sup>16</sup>

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

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<sup>12</sup> 12 U.S.C. § 1842(c)(1).

<sup>13</sup> The Jacksonville Area, Florida banking market is defined as Baker, Clay, Duval, and Nassau counties in Florida; the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, St. Johns, and Switzerland in St. Johns County, Florida; and the city of Folkston in Charlton County, Georgia.

<sup>14</sup> Deposit and market share data are as of June 30, 2013, 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).

<sup>15</sup> 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 the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (Aug. 19, 2010), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://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.

<sup>16</sup> Ameris operates the 12th largest depository institution in the Jacksonville Area, Florida banking market with approximately \$238 million in deposits, which represent less than 1 percent of market deposits. Prosperity operates the 25th largest depository institution in the same market, controlling deposits of approximately \$42.5 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Ameris would operate the 12th largest depository institution in the market, controlling weighted deposits of approximately \$280.5 million, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 2937, and 39 competitors would remain in the market.

of resources in the banking market in which Ameris and Prosperity 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 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 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 of these factors and, as described below, has determined that they are all 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 Ameris, 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, 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. Ameris and Ameris Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured to give Prosperity shareholders the option of exchanging their shares for shares in Ameris or receiving cash consideration.<sup>17</sup> Ameris is in satisfactory financial condition, and the asset quality, earnings, and liquidity of Ameris Bank are consistent with approval. 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 Ameris, Prosperity, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has

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<sup>17</sup> If a holder of Prosperity common stock elects to exchange shares, the Prosperity shares would be cancelled and converted into the right to receive Ameris's common stock based on a fixed exchange ratio. If a holder of Prosperity common stock elects to receive cash consideration for shares, the holder would receive a fixed cash amount in exchange for each share. The number of shares of Prosperity common stock for which cash consideration would be paid is limited to 50 percent of the total number of Prosperity shares converted in the transaction. Ameris has the resources to fund the cash consideration portion of the transaction.

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.

Ameris and its subsidiary depository institution are each considered to be managed well. Ameris's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Ameris have substantial knowledge and experience in the banking and financial services sectors.

The Board also has considered Ameris's plans for implementing the proposal. Ameris is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.<sup>18</sup> Ameris would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ameris's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Ameris plans to integrate Prosperity's existing management and personnel in a manner that augments Ameris's management.<sup>19</sup>

Ameris's supervisory 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 and Ameris's money-laundering policies are consistent with approval.

#### *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").<sup>20</sup> 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,<sup>21</sup> 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.<sup>22</sup>

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<sup>18</sup> Ameris Bank has support divisions with experienced senior management with specific areas of expertise and responsibilities to ensure a smooth integration, including a dedicated systems conversion project team and a special assets team. In addition, Ameris Bank has reassigned its most experienced senior credit officer to manage the region that will include the legacy Prosperity Bank locations, and has hired compliance and audit staff experienced in bank integration.

<sup>19</sup> Certain senior executive officers of Prosperity Bank are expected to retain management positions within the merged bank. Following the merger, the current President and Chief Executive Officer of Prosperity Bank will serve as Regional President of Ameris Bank, the current Executive Vice President and Chief Lending Officer of Prosperity Bank will serve as Senior Vice President/Commercial Banking of Ameris Bank, the current Executive Vice President and Chief Banking Officer of Prosperity Bank will serve as Senior Vice President/Retail Banking of Ameris Bank, and the Executive Vice President and Chief Credit Officer of Prosperity Bank will serve as Senior Vice President/Credit Administration of Ameris Bank. The executive officers and directors of Ameris and Ameris Bank will continue to serve in their capacities following the merger.

<sup>20</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>21</sup> 12 U.S.C. § 2901(b).

<sup>22</sup> 12 U.S.C. § 2903.

The Board has considered all the facts of record, including reports of examination of the CRA performance of Ameris Bank and Prosperity Bank, data reported by Ameris Bank and Prosperity Bank under the Home Mortgage Disclosure Act (“HMDA”),<sup>23</sup> other information provided by Ameris, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of Ameris Bank’s fair lending record as reflected in 2011 HMDA data and the bank’s CRA performance record.

### *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.<sup>24</sup> 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.<sup>25</sup> 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 Ameris Bank.* Ameris Bank was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of December 7, 2009 (“Ameris Bank Evaluation”).<sup>26</sup> Examiners considered Ameris Bank to have an adequate record of lending inside of its assessment areas and an adequate record in community development lending.<sup>27</sup> Ameris Bank received a “low satisfactory” rating for the Lending, Service, and Investment Tests.<sup>28</sup>

As described in the Ameris Bank Evaluation, FDIC examiners found that the bank’s overall volume of lending was good and that it had a good record of serving its assessment areas’ credit needs.<sup>29</sup> The bank had a good record of lending to businesses of different sizes, especially smaller-sized businesses, and an adequate record of residential lending to borrowers of different incomes. FDIC examiners noted, however, that isolated instances of unfair lending had been identified in the bank’s Dothan, Alabama, assessment area.<sup>30</sup> Examiners noted that, considering the differences among the bank’s markets and their

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<sup>23</sup> 12 U.S.C. § 2801 *et seq.*

<sup>24</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

<sup>25</sup> 12 U.S.C. § 2906.

<sup>26</sup> The 2009 examination was conducted using the Large Bank CRA Examination Procedures. Examiners focused on the bank’s small business and residential lending record for 2008.

<sup>27</sup> The Ameris Bank Evaluation reviewed data available to the FDIC as of the date of the evaluation concerning all 2008 and 2009 loans originated or purchased within the relevant assessment areas. In addition, examiners reviewed all of the community development activities and the flexible and innovative lending practices and products from June 30, 2003, through September 30, 2009.

<sup>28</sup> The Ameris Bank Evaluation included a full-scope review of four assessment areas: Albany, Georgia MSA; Dothan, Alabama MSA; Jacksonville, Florida MSA; and Columbia, South Carolina MSA. A limited scope review was performed in the Tifton, Georgia Non-MSA. Examiners placed greater weight on the bank’s performance in Georgia than in the other three states due to the bank’s longevity in the state as well as the number of its offices and the volume of its lending operations in the state; 77 percent of the bank’s loans were made in the Georgia market.

<sup>29</sup> Small business and residential mortgage lending are the bank’s primary lending focus.

<sup>30</sup> Specifically, FDIC examiners identified three instances of unfair pricing for African American borrowers compared to similarly-situated white borrowers in the Dothan, Alabama market. The FDIC determined that these were isolated instances, required the bank to take corrective actions to address deficiencies in its compliance management system highlighted by these instances, and concluded that the bank’s overall compliance management system was adequate.

respective demographics, Ameris Bank had adequately penetrated LMI geographies throughout its assessment areas. Examiners also noted that the bank had made good use of its flexible lending programs and had originated over \$9.2 million in community development loans in its combined assessment areas during the evaluation period.

With respect to the Investment Test, FDIC examiners found that although Ameris Bank was passive to the investment needs of its communities, it did participate in various CRA-qualified investment vehicles. In particular, FDIC examiners noted that Ameris Bank's total outstanding qualified community development investments of \$6.9 million represented 0.31 percent of average total assets since the previous examination and 2.75 percent of total equity capital for the same period. The dollar volume of investments, viewed in light of Ameris Bank's capacity and the opportunity for making qualified investments in its assessment areas, was a key driver in the rating assigned to Ameris Bank on the Investment Test.

With respect to the Service Test, FDIC examiners focused on the retail banking and community development services provided by Ameris Bank throughout its assessment areas and concluded that the bank provided a reasonable level of both services. Specifically, FDIC examiners concluded that the bank's delivery systems were reasonably accessible overall<sup>31</sup> and that the bank provided a fairly reasonable number of community development services in its areas of operations.<sup>32</sup> However, examiners found that during the evaluation period Ameris Bank had only an adequate level of participation in community development activities and retail banking services dedicated to LMI areas or individuals in its assessment areas.

*CRA Performance of Prosperity Bank.* Prosperity Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of April 18, 2011 ("Prosperity Bank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.<sup>33</sup> Examiners concluded that Prosperity Bank's lending levels demonstrated excellent responsiveness to the credit needs, and a satisfactory responsiveness to the community development needs, of its assessment areas, and that the bank maintained a significant level of qualified community development investments. Examiners noted, however, that Prosperity Bank showed an inadequate responsiveness to the credit needs of small- and start-up businesses in several assessment areas.

*Ameris Bank's Efforts Since the 2009 CRA Evaluation.* Ameris represents that since the Ameris Bank Evaluation, Ameris Bank has extended 43 community development loans totaling \$52.2 million, which primarily funded affordable housing initiatives and the provision of community services in various locations, including distressed communities, throughout its assessment areas. In addition, Ameris stated that, from 2010 to 2013, Ameris Bank has made \$33.8 million in qualified investments, including investments in Ginnie Mae Mortgage Backed Securities and the CRA Qualified Investment Fund, both of which benefitted all four states in the bank's assessment areas. The bank also invested in

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<sup>31</sup> At the time of the Ameris Bank Evaluation, the bank operated 48 full-service offices, eight branches in moderate-income geographies, 25 in middle-income tracts, and 14 in upper-income tracts. Of the 25 branches located in middle-income tracts, 11 were located in close proximity to moderate-income tracts. Ameris Bank also had 47 ATM locations and provided customers with free internet and telephone access to their accounts.

<sup>32</sup> The Ameris Bank Evaluation found that the bank participated in a total of 252 service projects in 2008 and 2009, of which 113 counted as CRA community development services (e.g., providing a first-time homebuyer workshop).

<sup>33</sup> The Prosperity Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, and examiners reviewed the bank's small business lending activity for the 2010 calendar year and loans reported on the bank's 2008 HMDA Loan Application Register. These products were selected for analysis because they represented 86.8 percent of the bank's loan portfolio.

school district bonds in Georgia and South Carolina and bonds from the Atlanta Georgia Urban Residential Finance Authority. Ameris also noted that since the Ameris Bank Evaluation, the bank has made approximately \$186,000 in donations, including matching dollars donated to the bank's "Fight Hunger Campaign" and other donations to organizations providing community services to LMI individuals, as well as economic development and affordable housing.<sup>34</sup>

## *2. Fair Lending Record and Public Comments on the Application*

The Board has considered the records of Ameris Bank and Prosperity Bank in complying with fair lending and other consumer protection laws. In addition to reviewing the Ameris Bank and Prosperity Bank Evaluations and Ameris Bank's record of performance in providing community development lending and services since its evaluation, as discussed above, the Board's consideration includes an evaluation of Ameris Bank's fair lending policies and procedures. This also includes consideration of other agencies' views on Ameris Bank's record of performance under fair lending laws. The Board also has taken into account the comments on the application.

*Ameris's Fair Lending Program.* Ameris has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk management program includes a centralized marketing plan to ensure consistency of marketing and advertising both at the corporate and the local/regional levels, secondary review of proposed loan pricing to reduce pricing exceptions, compliance training for applicable employees on a quarterly basis, and collection and tracking of customer complaints to ensure appropriate responses and reports to management or the board of directors concerning indications of possible fair lending implications. Ameris is developing a customer-based pricing model that would allow more consistent pricing at the customer level across the entirety of Ameris Bank. In addition, Ameris has begun to develop a centralized approval and review process to enable bank-wide secondary reviews, including denied, withdrawn, approved, or not-accepted loans, and has also created a "Chief Risk Officer" position to provide direct oversight and management of the company's compliance program. Ameris's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

*Public Comments on the Application.* Commenters raised concerns about the greater incidence of higher-cost mortgage loans to minority and LMI borrowers than to nonminority borrowers compared to the aggregate of all lenders in the bank's rural Georgia markets, as reflected by data reported under HMDA in 2011. Specifically, commenters alleged that 42.1 percent of the bank's higher-cost loans were issued to LMI borrowers compared to 33.8 percent for the aggregate. Similarly, commenters alleged that 21.4 percent of the bank's higher-cost loans were issued to African American borrowers compared to 15.7 percent for the aggregate. Commenters also noted pricing disparities between African American and white borrowers and between LMI and middle- and upper-income borrowers with respect to the bank's home-improvement and refinance loans. It was also alleged that Ameris Bank issued fewer prime loans to LMI and African American borrowers compared to the aggregate. The commenters contended that these disparities suggest that Ameris Bank may be steering LMI and African American borrowers into higher-cost loans and that the bank needed to improve its marketing, underwriting, and product development activities. In addition, the commenters questioned the public benefits of the proposal.

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<sup>34</sup> These loans, investments, and donations have not yet been evaluated by the FDIC.

*Analysis of HMDA Data and Pricing Disparities.* Although the commenters did not allege specific denial disparities, they generally contended that Ameris Bank had a poor record of meeting the credit needs of LMI and African American borrowers in the communities the bank served. In response to the comments, the Board analyzed Ameris Bank's HMDA data to develop a view of the bank's overall lending patterns. The Board's analysis included a review of the bank's 2010, 2011, and 2012 HMDA and small business lending data in its combined Statewide CRA assessment areas, for each statewide assessment area, including the rural Georgia Statewide areas, and in several individual markets where the bank received a significant volume of applications.

The Board's analysis revealed that generally Ameris Bank's volume of mortgage applications from and loans to African American and Hispanic individuals, as a percent of total applications and loans, exceeded those of the aggregate for all three years. Similarly, the bank's record of receiving applications from and making loans to majority-minority tracts, to LMI tracts, and to LMI individuals also consistently exceeded those of the aggregate. Within the combined Georgia market, where the bank derived 67 percent of its total loans for 2012, the bank's percentage of mortgage applications from and loans to Hispanic individuals exceeded that of the aggregate, although its percentages for African American individuals generally lagged the aggregate for the three years. However, the bank's percentages of applications from and loans to majority-minority tracts, LMI tracts, and LMI individuals in the combined Georgia market generally approximated or exceeded those of the aggregate. Moreover, in its rural Georgia markets, which were of particular interest to the commenters, Ameris Bank's percentage of applications from and loans to African Americans and Hispanic individuals exceeded those of the aggregate. The bank's percentage of applications from and loans to majority-minority tracts, LMI tracts and LMI individuals also consistently exceeded those of the aggregate in this market.

In addition, to address the pricing disparities noted by commenters, the Board reviewed Ameris Bank's 2011 mortgage pricing data for its rural Georgia markets as well as the bank's 2011 and 2012 HMDA data for relevant assessment areas. Although the Board was not able to duplicate the specific data disparities presented by the commenters, the Board's analysis more generally confirmed the commenters' allegations that the bank's volume of high-cost loans, as a percentage of total loans, exceeded those of the aggregate and that the bank made fewer prime loans to LMI and African American borrowers than the aggregate in the markets of concern to the commenters. The Board's analysis showed that Ameris had a higher percentage of higher-cost loans than the aggregate in 2011 and 2012. Moreover, the bank's percentages of higher-cost loans to African American and Hispanic borrowers were significantly higher than those of the aggregate. Similarly, the bank's percentages of higher-cost loans for minority and LMI individuals and for minority and LMI census tracts exceeded those of the aggregate.

The Board is concerned by data indicating pricing disparities between minority and white borrowers and between LMI and middle- and upper-income borrowers. The Board 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. However, many elements factor into a lender's pricing decision, and HMDA data are not sufficient to evaluate a bank's compliance with fair lending laws and regulations because the data do not include the key lending factors which may explain the observed disparities.<sup>35</sup> Fully evaluating Ameris Bank's compliance with fair lending laws and regulations overall and with respect to its

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<sup>35</sup> 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

loan pricing practices would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed pricing disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with the bank's primary federal regulator, the FDIC, regarding its evaluation of Ameris Bank's compliance with fair lending laws and regulations overall and with respect to its loan pricing practices in particular. The FDIC reported that, based on a recent review, it did not find evidence that Ameris Bank engaged in discriminatory conduct in making its credit decisions.

In response to the commenters' concerns about racial and income disparities in the bank's loan pricing practices, the FDIC conducted an onsite review of Ameris Bank to determine whether the bank has been pricing mortgage loans fairly, based on the creditworthiness of the borrower.<sup>36</sup> Although the review confirmed the disparities noted by commenters, FDIC examiners did not find that the bank deviated from its established pricing matrix in the reviewed cases or that loan prices were based on discriminatory reasons.<sup>37</sup> FDIC examiners concluded that race was not a factor in the bank's pricing of loans. In addition, FDIC examiners conducted an underwriting analysis comparing minority and nonminority denied and approved applicants and did not find evidence that applicants were denied based on prohibited factors. Examiners also reviewed the bank's mortgage marketing practices and did not find evidence that the bank was steering or targeting minority individuals into higher-priced loans. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of Prosperity Bank into Ameris Bank and has approved the merger under the Bank Merger Act.

### *3. 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 Ameris Bank, Prosperity Bank, or both.<sup>38</sup> 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 bank.

Ameris represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including back-office operations. Ameris notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meet the banking needs of their customers. In addition, Ameris notes that Prosperity Bank's current operations would be evaluated under the more strenuous requirements of the large bank examination procedures, which may further improve lending performance among local constituents.

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for an independent assessment of an applicant's credit worthiness. 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.

<sup>36</sup> The review began on September 16, 2013, and examiners reviewed the bank's loan data for 2011, 2012, and year-to-date 2013.

<sup>37</sup> The review also showed that pricing for the bank's secondary market loans is standardized through an automated underwriting system and that the bank uses a manual underwriting system and its pricing matrix to price its nonconforming portfolio loans.

<sup>38</sup> Commenters alleged that the proposal would not provide a clear or significant public benefit. The commenters specifically asserted that to satisfactorily demonstrate the public benefits of the proposal, Ameris should, among other things, partner with local community organizations, including the commenters' partners, to offer housing counseling and financial education classes to help underserved borrowers qualify for affordable mortgages. In evaluating the public benefits of a proposal, the Board considers all benefits of the proposed transaction, not just those that benefit specific disadvantaged communities. See, e.g., *First Merit Corporation*, FRB Order No. 2013-3 (March 22, 2013).

Ameris also states that it would provide substantially similar retail and commercial banking products and services as are currently provided by Prosperity Bank. Prosperity Bank's customers would benefit from Ameris Bank's stronger financial position as well as its banking expertise and resources, including marketing, advertising, product development, commercial and consumer credit, employee training and personnel, and automated banking.

The merger also would benefit current customers of Prosperity Bank through access to significantly larger branch and ATM networks. The branch network available to current Prosperity Bank customers would increase from 12 to 69 branch locations throughout Georgia, Florida, South Carolina and Alabama.

#### *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 Ameris, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Ameris Bank and Prosperity Bank, and review of examination reports, 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 Ameris 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."<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Ameris would have approximately \$3.6 billion in consolidated assets, and by any of a number of alternative

<sup>39</sup> 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).

<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>41</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

measures of firm size, Ameris would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets would 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 100 U.S. financial institutions in terms of those metrics. For example, Ameris'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 those services would have a significant 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.<sup>42</sup> 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 Ameris with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 6, 2013.

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<sup>42</sup> The commenters requested that the Board hold public hearings 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 commenters' requests 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 commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

United Bankshares, Inc.  
Charleston, West Virginia

*Order Approving the Acquisition of a Bank Holding Company, Merger of Banks, and Establishment of Branches*  
*FRB Order No. 2013-13 (December 12, 2013)*

United Bankshares, Inc. (“United”), Charleston, West Virginia, and its subsidiary, George Mason Bankshares, Inc. (“GMB”), Fairfax, Virginia (together with United, the “Applicants”), have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to acquire Virginia Commerce Bancorp, Inc. (“VCB”) and thereby indirectly acquire its subsidiary bank, Virginia Commerce Bank (“VC Bank”), both of Arlington, Virginia. In addition, Applicants’ subsidiary state member bank, United Bank, Fairfax, Virginia (“Fairfax Bank”), has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”) to merge with VC Bank, with Fairfax Bank as the surviving entity.<sup>2</sup> Fairfax Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and branches of VC Bank.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 40739 (2013)) and locally in accordance with the relevant statutes and the Board’s Rules of Procedures.<sup>4</sup> As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request was provided to the appropriate banking agency. The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

United, with consolidated assets of approximately \$8.5 billion, is the 108th largest insured depository organization in the United States, controlling approximately \$6.6 billion in consolidated deposits.<sup>5</sup> United controls two subsidiary banks, Fairfax Bank and United Bank, Inc., Parkersburg, West Virginia (“Parkersburg Bank”), which operate in the District of Columbia, Maryland, Ohio, Pennsylvania, Virginia, and West Virginia.<sup>6</sup> United is the second largest depository organization in West Virginia, controlling deposits of approximately \$3.6 billion, and is the 13th largest depository organization in the District of Columbia with approximately \$418.7 million in deposits, which represent 11.7 percent and 1.2 percent of the total deposits of insured depository institutions in these jurisdictions, respectively.<sup>7</sup> In addition, United is the 16th largest depository organization in Virginia with approxi-

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> 12 U.S.C. § 1828(c). VCB would be merged into GMB.

<sup>3</sup> 12 U.S.C. § 321.

<sup>4</sup> 12 CFR 262.3(b).

<sup>5</sup> Asset data are as of June 30, 2013, unless otherwise noted, and nationwide deposit-ranking data are as of June 30, 2013.

<sup>6</sup> Fairfax Bank operates in the District of Columbia, Maryland, and Virginia. Parkersburg Bank operates in Maryland, Ohio, Pennsylvania, and West Virginia.

<sup>7</sup> State deposit and asset data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

mately \$1.8 billion in deposits, the 22nd largest in Maryland with approximately \$492.3 million in deposits, the 101st largest in Pennsylvania with approximately \$320.2 million in deposits, and the 216th largest in Ohio with approximately \$42.6 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in those states, respectively.

VCB, with total consolidated assets of \$2.8 billion, controls VC Bank, which operates in Virginia. VC Bank is the 13th largest insured depository institution in Virginia, controlling deposits of approximately \$2.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, United would become the 91st largest depository organization in the United States, with total consolidated assets of approximately \$11.6 billion.<sup>8</sup> United would control deposits of approximately \$8.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Virginia, United would be the seventh largest depository organization, controlling deposits of approximately \$4.0 billion, which represent 1.6 percent of the total deposits of insured depository institutions in that 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

For purposes of the BHC Act, the home state of United is West Virginia,<sup>12</sup> and VCB is located in Virginia.<sup>13</sup> United is well capitalized and well managed under applicable law. Virginia law has no minimum requirements for period of operation,<sup>14</sup> and VC Bank has been in existence for more than five years.

<sup>8</sup> Pro forma total consolidated assets reflect adjustments associated with fair market value accounting and goodwill.

<sup>9</sup> 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).

<sup>10</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A).

<sup>12</sup> 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.

<sup>13</sup> 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); 1842(d)(1)(A); and 1842(d)(2)(B).

<sup>14</sup> See VA. CODE § 6.2-704(C) (2013) (permits interstate acquisitions but does not impose a requirement for period of operation).

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 \$10.4 trillion. On consummation of the proposed transaction, United 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.

### Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit 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.<sup>15</sup>

United and VCB compete directly in the Washington, DC-MD-WV-VA banking market.<sup>16</sup> The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in insured depository institutions in the market (“market deposits”) controlled by United and VCB,<sup>17</sup> 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 Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),<sup>18</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in this market. On consummation of the proposal, the banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.<sup>19</sup>

<sup>15</sup> 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

<sup>16</sup> The Washington, DC-MD-WV-VA banking market includes the Washington, DC-MD-WV-VA Rannally Metro Area (“RMA”); the non-RMA portions of the counties of Calvert, Charles, Frederick, Prince George’s and St. Mary’s, Maryland; Fauquier and Loudoun counties, Virginia; Jefferson County, West Virginia; and the Virginia independent cities of Alexandria, Fairfax, Falls Church, and Manassas.

<sup>17</sup> Deposit and market share data are as of June 30, 2013, 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).

<sup>18</sup> 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](http://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.

<sup>19</sup> United is the 16th largest depository institution in the Washington, DC-MD-WV-VA banking market with approximately \$2.1 billion in deposits, which represent approximately 1.4 percent of market deposits. VCB is the 14th largest depository institution in the same market, controlling deposits of approximately \$2.1 billion, which represent approximately 1.4 percent of market deposits. On consummation of the proposed transaction, United would become the ninth largest depository institution in the market, controlling weighted deposits of approximately \$4.2 billion, which represent approximately 2.8 percent of market deposits. The HHI would increase by four points to 931, and 82 competitors would remain in the market.

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 United and VCB 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 and the Bank Merger Act require the Board to take into consideration a number of other factors in acting on bank acquisition applications.<sup>20</sup> These factors include the financial and managerial resources (including 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 combating 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 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 United, 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, 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. United, Fairfax Bank, and Parkersburg Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured as an exchange of shares.<sup>21</sup> United is in satisfactory financial condition, and the asset quality, earnings, and liquidity of both Fairfax Bank and VC Bank are consistent with approval. Based on its

<sup>20</sup> 12 U.S.C. §§ 1842(c)(2)-(3) and 1828(c)(5).

<sup>21</sup> As part of the proposed transaction, each share of VCB common stock would be cancelled and converted into the right to receive United common stock based on an exchange ratio. Additionally, United would assume existing VCB stock options and would pay the United States Department of the Treasury in full for all of VCB's Troubled Asset Relief Program preferred stock warrants.

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 United, VCB, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money laundering laws.

United, VCB, and their subsidiary depository institutions are each considered to be managed well. United's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of United have substantial knowledge and experience in the banking and financial services sectors.<sup>22</sup> Both the chairman and chief executive officer of United would continue in their roles following consummation of the proposed transaction.

The Board also has considered United's plans for implementing the proposal. United is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal.<sup>23</sup> United would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective.<sup>24</sup> United's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. United plans to integrate VC Bank's existing management and personnel in a manner that augments United's management.<sup>25</sup>

United's bank 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 and United's money laundering policies, are consistent with approval.

#### *B. Convenience and Needs Considerations*

In acting on a proposal under section 3 of the BHC Act and under the Bank Merger 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 insti-

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<sup>22</sup> On consummation, two current VCB directors would be appointed to United's board, and four current VC Bank directors would be appointed to Fairfax Bank's board.

<sup>23</sup> The company plans to establish various committees comprised of key United and VCB executives with specific areas of expertise and responsibilities to ensure a smooth integration. In addition, United has made significant management and process changes to address the operations of the combined organization, including, for example, increasing the size of its risk-management and audit staff, reorganizing and expanding the Information Technology department, and engaging consultants to review and enhance the company's information security and loan operation functions.

<sup>24</sup> United has consolidated its bank-specific risk-management functions into an enterprise-wide system and has increased the size of its risk-management staff to a level commensurate with the operations of the combined organization.

<sup>25</sup> The officers of VC Bank are expected to retain similar positions within the merged bank. The current president and chief executive officer of Fairfax Bank would continue to serve in these positions, while the current president and chief executive officer of VCB and VC Bank would be appointed to serve as "President Emeritus" of Fairfax Bank following the merger.

tutions under the Community Reinvestment Act (“CRA”).<sup>26</sup> 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,<sup>27</sup> 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.<sup>28</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of Fairfax Bank, Parkersburg Bank, and VC Bank, data reported by Fairfax Bank and VC Bank under the Home Mortgage Disclosure Act (“HMDA”),<sup>29</sup> other information provided by United, confidential supervisory information, and the public comments received on the proposal. Commenters objected to the proposal on the basis of the small business lending record of Fairfax Bank and VC Bank, as well as the mortgage lending records of VC Bank as reflected in 2011 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.<sup>30</sup> 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.<sup>31</sup> 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 Fairfax Bank.* Fairfax Bank was assigned a “satisfactory” rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond (“Reserve Bank”), as of June 3, 2013 (“Fairfax Bank Evaluation”). Examiners considered Fairfax Bank to have an excellent record of lending inside its assessment areas and noted that the bank’s community development lending performance demonstrated responsiveness to community credit needs.<sup>32</sup> Fairfax Bank received an “outstanding” rating on the Lending Test, “high satisfactory” on the Service Test, and “low satisfactory” on the Investment Test.<sup>33</sup>

As described in the Fairfax Bank Evaluation, Reserve Bank examiners found that Fairfax Bank provided a significant level of community development loans and an overall level of qualified community development investments that were responsive to community credit

<sup>26</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>27</sup> 12 U.S.C. § 2901(b).

<sup>28</sup> 12 U.S.C. § 2903.

<sup>29</sup> 12 U.S.C. § 2801 *et seq.*

<sup>30</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

<sup>31</sup> 12 U.S.C. § 2906.

<sup>32</sup> The Fairfax Bank Evaluation reviewed (i) loan data and community development lending activities reported by Fairfax Bank from January 1, 2011, through December 31, 2012; (ii) qualified community development loans and services consummated or provided from March 28, 2011, through June 3, 2013; and (iii) all qualified investments made from March 28, 2011, through June 3, 2013, or outstanding as of June 3, 2013.

<sup>33</sup> The Fairfax Bank Evaluation included a full-scope review of three assessment areas: Washington-Baltimore-Northern Virginia, DC-MD-VA Combined Statistical Area (“Multistate CSA”); Harrisonburg, Virginia Metropolitan Statistical Area; and Augusta County, Virginia Assessment Area. A limited scope review was performed in the Charlottesville, Virginia MSA and the Shenandoah County, Virginia Non-MSA.

needs. Examiners noted that the bank's delivery systems were accessible and convenient to geographies and individuals of different income levels within the bank's assessment areas. In addition, examiners found that Fairfax Bank had a good record of participating in community development initiatives.

With respect to the Lending Test, examiners noted that the bank is a leader in making community development loans. In particular, examiners noted that the bank had an excellent record of lending within its assessment areas, with good distributions of loans across geographies and among borrowers of different income levels. The amount and responsiveness of community development lending in the bank's assessment areas were also key factors in the "outstanding" rating.<sup>34</sup> During the evaluation period, Fairfax Bank extended approximately \$39.3 million in community development loans. These loans reflected a variety of community development purposes, such as supporting affordable housing and funding organizations that provided community services or promoted economic development benefiting predominately LMI communities and individuals within the bank's assessment areas.

In the Fairfax Bank Evaluation, while the bank's qualified community investment activities were rated "low satisfactory," examiners found that the bank's overall community development investments were responsive to community credit needs.<sup>35</sup> Fairfax Bank's investments included an equity investment of \$2 million in the CRA Fund, which invests in community development projects that provide for the development of LMI areas and the improvement of the quality of life for LMI residents; a \$1.5 million commitment in the Franklin Capital Low-Income Housing Tax Credit Fund, which provides rehabilitation financing for several multifamily housing developments in Virginia; and equity investments totaling \$3.1 million in the Virginia Community Development Corporation's Housing Equity Fund, which facilitates the development and financing of affordable housing throughout Virginia and utilizes the federal low-income housing tax credit program. In addition, between March 2011 and December 2012, Fairfax Bank donated approximately \$124,820 to support numerous community development organizations whose operations assist LMI individuals and areas.

With respect to the Service Test, examiners stated that the bank had a high level of community development services within its primary market areas. It was noted that Fairfax Bank and its employees actively sought out, and participated in, opportunities that were generally targeted to LMI individuals and areas within the communities the bank served. In addition, Fairfax Bank employees have been involved with organizations that assist small businesses with funding, provide financial literacy training, promote affordable housing opportunities, or support education.

*CRA Performance of Parkersburg Bank.* United's lead bank subsidiary, Parkersburg Bank, received an overall "satisfactory" rating at its most recent CRA evaluation by the Reserve Bank on June 3, 2013 ("Parkersburg Evaluation"), with ratings of "high satisfactory" for the Lending Test, "low satisfactory" for the Investment Test, and "outstanding" for the

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<sup>34</sup> Fairfax Bank's lending is considered highly responsive to community credit needs, with an overwhelming majority of the bank's HMDA loans (approximately 88 percent) and small business loans (approximately 85 percent) originated within its assessment area.

<sup>35</sup> The "low satisfactory" rating on the Investment Test was driven by the bank's performance in its largest assessment area, the Multistate CSA, where the bank held only three investments totaling \$595,000 (or 11 percent of its total qualified investments).

Service Test.<sup>36</sup> Examiners noted that a high percentage of the bank's HMDA, small business, and consumer loans were originated within the bank's assessment areas.

In assigning Parkersburg Bank a "high satisfactory" rating for the Lending Test, Reserve Bank examiners noted that the bank participated in a variety of special lending programs that benefit LMI borrowers and communities. For example, the bank originated 21 loans totaling about \$1.4 million during the evaluation period under the Affordable Housing Option loan program, which offers home purchase, refinance, and rehabilitation loans with up to 97 percent financing, and is limited to families whose incomes do not exceed 80 percent of the Department of Housing and Urban Development's median family income for their county of residence.<sup>37</sup> Examiners also noted that Parkersburg Bank made a high level of community development loans (originating or renewing 61 such loans totaling about \$18.6 million during the review period), which ultimately benefitted LMI borrowers and communities.

As noted, Parkersburg Bank was assigned a "low satisfactory" on the Investment Test. This rating was driven by the fact that during the review period, the bank had only six qualifying investments totaling \$6.8 million, which represented less than 1 percent of the bank's total assets.

On the Service Test, examiners rated the bank's overall performance "Outstanding." The bank's delivery systems, branch locations, and hours of operation were considered accessible and convenient to all portions of the assessment areas. Of the bank's 63 branch offices, 16, or 31.7 percent, were located in LMI areas.

CRA Performance of VC Bank. VC Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Reserve Bank, as of October 31, 2011 ("VC Bank Evaluation"),<sup>38</sup> with ratings of "low satisfactory" for the Lending Test and "high satisfactory" for the Investment and Service Tests.<sup>39</sup> Examiners also concluded that, while VC Bank maintained a significant level of qualified community development investments, the bank's distribution by borrower income or revenue was only marginally adequate.

With respect to the Lending Test, examiners determined that the bank's loan distribution by borrower income or revenue was marginally adequate and that geographic distribution was poor. However, examiners noted that a substantial majority of the bank's HMDA and small business loans, both by number and volume, were extended within the bank's assessment area. In addition, the bank provided a relatively high level of community develop-

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<sup>36</sup> The Parkersburg Evaluation reviewed HMDA, small business, and consumer lending activity reported by the bank from January 1, 2011, through December 31, 2012. Examiners also considered qualified community development loans originated from March 14, 2011, through June 3, 2013.

<sup>37</sup> Additionally, as noted in the Parkersburg Evaluation, Parkersburg Bank (1) has extended 166 loans totaling \$1.8 million as part of the FHA Title 1 Home Improvement loan program, which offers flexible nontraditional underwriting criteria for home improvement loans; (2) has been involved in eight projects under the Federal Home Loan Bank ("FHLB") Affordable Housing program, which provides grants and loans for new and rehabilitated single- and multifamily housing projects; (3) has provided three eligible small businesses with start-up and expansion funding totaling \$320,000 under the FHLB Banking on Business program; and (4) has provided 36 veterans with more than \$305,000 in home improvement assistance as part of a partnership with the Atlanta FHLB to provide grants to LMI veterans for eligible home improvement loans.

<sup>38</sup> The VC Bank Evaluation reviewed loan data and small business lending activity reported by Fairfax Bank from January 1, 2009, through December 31, 2010. The evaluation also considered any qualified community development loans, investments, or service activities since the previous evaluation, and all qualified investments outstanding as of October 31, 2011, regardless of when such investments were made.

<sup>39</sup> Ratings for the Lending, Investment, and Service Tests are assigned to an institution based on its performance within an assessment area. For both Fairfax Bank and VC Bank, the Lending Test performance accounts for half of the banks' overall rating, while the Investment and Service Tests each accounted for one quarter of the banks' overall rating.

ment loans (16 loans totaling \$36.7 million) within its assessment areas during the review period. These loans contributed significantly to the revitalization of LMI areas, development of affordable housing, provision of community development services, and promotion of small businesses within the assessment areas.

With respect to the Investment Test, examiners noted that VC Bank held 10 qualified community development investments totaling \$29.1 million, the majority of which were directed at initiatives to help LMI borrowers in Virginia attain quality, affordable housing. Examiners also determined that the bank's retail banking delivery systems were effective and accessible to all portions of the assessment area, including LMI areas and, consequently, assigned the bank a "high satisfactory" rating under the Service Test.

## *2. Fair Lending Record*

The Board has considered the records of Fairfax Bank, Parkersburg Bank, and VC Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the Fairfax Bank and VC Bank Evaluations, discussed above. This also includes an evaluation of Fairfax Bank's fair lending policies and procedures. The Board also has taken into account the comments on the application.

*United's Fair Lending Program.* United has instituted policies and procedures at Fairfax Bank and Parkersburg Bank to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk-management program includes (1) procedures to evaluate new laws and regulations to determine applicability to United's mortgage operations, (2) annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls, (3) fair lending training for all lending-related employees, (4) comparative loan file reviews, (5) legal and compliance reviews for potential fair lending complaints, and (6) policies requiring a second review of all home mortgage loan applications initially recommended for denial or for approval based on policy exceptions. United also engages in ongoing monitoring and testing, on a regular basis, to ensure compliance with federal and state laws and regulations and internal policies and procedures. Findings from these ongoing efforts are reported to United's board and management and serve as a catalyst for additional training, updating of policies and procedures, and implementing additional controls. United's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

## *3. HMDA and Small Business Lending Analysis, and Public Comment on the Application*

Based on HMDA data from 2011, the commenters alleged that both Fairfax Bank and VC Bank had a poor record of meeting the needs of small businesses in LMI communities compared to the aggregate of lenders in certain assessment areas. The commenters further alleged that in 2011 VC Bank made a lower percentage of mortgage loans to LMI and African American borrowers and in LMI census tracts compared to the aggregate of lenders in certain assessment areas. In addition, commenters questioned the public benefits of the proposal.

The Board has reviewed HMDA and CRA small business lending data from 2011 and 2012 reported by Fairfax Bank, Parkersburg Bank, and VC Bank, the most recent publicly available data. In response to the comments, the Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns by Fairfax Bank, Parkersburg Bank, and VC Bank, even though the commenters did not criticize Fairfax Bank's or Parkersburg Bank's HMDA lending records. The Board focused its analysis on the market areas

addressed in the public comments (Northern Virginia; Harrisonburg, Winchester, Augusta County, Staunton, and Waynesboro City, Virginia; and Washington, D.C. MSA).

The commenters asserted that in 2011 Fairfax Bank made 4.9 percent of its small business loans in LMI census tracts in Winchester, Virginia (compared to 10.6 percent for the aggregate) and extended 36.6 percent of such loans to companies with Gross Annual Revenues (“GARs”) of \$1 million or less in the Washington, D.C. MSA (compared to 45.3 percent for the aggregate). The Board’s review confirmed the disparity noted by the commenters.<sup>40</sup> However, the Board’s analysis also revealed that Fairfax Bank’s small business lending in LMI census tracts improved significantly from 2011 to 2012 in Winchester and other markets of concern to the commenters and was consistent with or exceeded the aggregate’s in 2012 in all but the Augusta-Staunton-Waynesboro, Virginia market.

In addition, the percentage of loans to businesses with GARs of \$1 million or less was consistent with or exceeded the aggregate for both 2011 and 2012 in the Winchester, Harrisonburg, and Augusta-Staunton-Waynesboro, Virginia MSAs. Such small business lending also increased slightly in the Washington, D.C. market in 2012, although it still lagged the aggregate. Importantly, when small business lending in the Washington, D.C. MSA was considered without regard to the size of business revenue, Fairfax Bank compared favorably to the aggregate, with 29.2 percent of the bank’s loans made to small businesses (regardless of revenue amount) compared to just 12.6 percent for the aggregate.

The Board’s review of Fairfax Bank’s 2011 and 2012 HMDA data showed that, in both years, the bank exceeded the aggregate in the percentage of HMDA loans made in LMI tracts in its combined assessment area, as well as in the Winchester and Harrisonburg, Virginia and the Washington, D.C. MSAs. The data also showed Fairfax Bank’s HMDA lending to LMI borrowers was consistent with or exceeded the aggregate in all the MSA’s except Harrisonburg, Virginia in 2012, where lending to LMI borrowers nevertheless showed significant improvement from 2011 to 2012.

With respect to VC Bank, the commenters asserted that in 2011, compared to the aggregate of lenders in Northern Virginia, the bank made fewer home mortgage loans to LMI borrowers (23.5 percent for the aggregate compared to the bank’s 12.7 percent) and to LMI neighborhoods (7.4 percent for the aggregate compared to the bank’s 4.4 percent). The commenters also asserted that VC Bank made 1.7 percent of its home mortgage loans to African Americans borrowers in Northern Virginia during 2011, compared to 5.2 percent for the aggregate. Furthermore, commenters stated that only 4.6 percent of VC Bank’s small business loans were extended in LMI census tracts in 2011 in Northern Virginia compared to 8.69 percent for the aggregate. The Board’s analysis confirmed that VC Bank lagged the aggregate in mortgage lending to LMI and African American borrowers and LMI communities in Northern Virginia in 2011. The analysis also showed that the bank’s mortgage lending continued to lag the aggregate in 2012.

The data shows, however, that there was significant improvement from 2011 to 2012 in the number of mortgage loan applications from, and originations to, LMI and African American borrowers, residents in minority census tracts, and in LMI census tracts. For example, in 2011, VC Bank received a total of six mortgage applications (or 1.4 percent of applications) from African Americans and originated all six (or 1.5 percent of loans). In 2012, the bank received 15 mortgage loan applications from African Americans (or 2.2 percent of applications) and originated 14 (or 2.2 percent of loans). Similarly, in 2012, VC Bank

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<sup>40</sup> Fairfax Bank conducted a CRA Self Evaluation in June 2012, which noted the same deficiencies indicated by the commenters. In response to this internal evaluation, Fairfax Bank increased its percentage of small business loans to LMI census tracts in Winchester, Virginia from 4.9 percent in 2011 to 30.4 percent in 2012.

improved its small business lending in minority census tracts and closely approximated the aggregate in LMI census tracts and to businesses with GARs of \$1 million or less.<sup>41</sup>

Since 2011, VC Bank has made an effort to increase lending to LMI neighborhoods and small business in LMI communities and to increase home mortgage lending to LMI and African American borrowers. In particular, the bank adopted the “In Reach” program, which provides portfolio mortgage loans at below market 30-year fixed rates for owner-occupied Northern Virginia residences at a 97 percent loan-to-value ratio for loans up to \$417,000, and at a 95 percent loan-to-value ratio for loans up to \$500,000, with no income limits for homes within LMI areas. The program has more than doubled the number and dollar amount of VC Bank’s home loans to LMI borrowers in Northern Virginia between 2011 (40 loans totaling \$8.8 million) and 2012 (93 loans totaling \$20.1 million). Similarly, VC Bank more than doubled the number and dollar amount of its home loans in LMI communities between 2011 (15 loans totaling \$5.8 million) and 2012 (48 loans totaling \$11.8 million).<sup>42</sup>

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 Fairfax Bank and VC Bank have excluded or denied credit to any group on a prohibited basis.<sup>43</sup>

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations by the Reserve Bank of compliance by Fairfax Bank, Parkersburg Bank, and VC Bank with fair lending laws and regulations. Fairfax Bank, Parkersburg Bank, and VC Bank also have provided the Board with detailed information on their training, marketing, advertising, and centralized underwriting programs, which reflect the companies’ commitment to the prevention of pre-screening, discouragement, or exclusion of credit applications on a prohibited basis. The Board also considered information showing the actual reasons for credit decisions.

The Reserve Bank’s analysis showed that the marketing programs of Fairfax Bank, Parkersburg Bank, and VC Bank were inclusive and unbiased and did not discourage minority applicants. Moreover, the analysis by the Reserve Bank showed that the banks involved consistently adhered to their underwriting guidelines and procedures, which are designed to ensure individual credit decisions are made on a non-discriminatory basis (e.g., credit history, inadequate collateral, and debt-to-income ratio).

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<sup>41</sup> One commenter expressed continuing concerns about VC Bank’s lending to LMI and African American borrowers and asserted that both banks have work to do to serve all communities in their service areas. This same commenter acknowledged and commended specific progress made by both Fairfax Bank and VC Bank to improve their HMDA and small business lending. In particular, the commenter praised Fairfax Bank for its significant progress in improving small business lending to businesses with GARs of \$1 million or less in Washington, D.C. and to LMI communities outside of Washington, D.C.

<sup>42</sup> One commenter has commended VC Bank for the increase in lending to LMI neighborhoods and small business in LMI communities, and the increase in home mortgage lending to LMI and African American borrowers through the adoption of the In Reach program.

<sup>43</sup> 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.

The Board notes the progress that United made in its lending performance against the aggregate from 2011 to 2012 and encourages United to continue this positive trend. To that end, United has committed that, at the next CRA examination following consummation of the merger with VCB and consistent with the combined organization's capacity and opportunities for making qualified lending and investments, the combined organization will demonstrate that it has engaged in levels of qualified lending and investments, home mortgage lending, small business lending, and community development lending and investments in low- and moderate-income communities in the Northern Virginia portion of United's Multistate CSA assessment area, that exceed United's improved performance in 2012. In addition, within thirty (30) days of consummation, United will develop a program, to apply across all assessment areas of the combined organization, with the objective of producing results exceeding United's improved performance in 2012. United will submit the program to the Reserve Bank for review and implement the program across the combined organization's assessment areas.

*Additional Information on 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 Fairfax Bank, VC Bank, or both.<sup>44</sup> 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 bank.

United represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including data processing. United notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers.

United also states that the proposal would offer customers convenience through a broader range of financial products. The merger would benefit VC Bank's customers with access to new products and services in the following areas: trust and estate services, retail checking and savings, business checking products services, cash management, credit cards, and consumer and commercial lending. In addition, the merger would enhance the suite of secondary market loan products and portfolio loan offerings to both Fairfax Bank's and VC Bank's noncommercial borrowers. For example, Fairfax Bank would introduce the United States Department of Agricultural Rural Development loan program to VC Bank clients, an option not currently available to these clients. Likewise, VC Bank would bring its CRA loan products to Fairfax Bank, thus expanding the products available to the latter's customers.

The merger also would benefit current customers of VC Bank through access to significantly larger branch and ATM networks. The branch network available to current VC Bank customers would increase from 28 to 136 branch locations throughout Virginia, West Virginia, Ohio, Maryland, Pennsylvania, and Washington, D.C. Similarly, the number of ATMs that VC Bank customers could access would increase from 29 to 197 locations throughout the same jurisdictions. United suggests that the expanded ATM network would offer greater access to current VC Bank customers located in LMI and middle income

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<sup>44</sup> The commenters alleged that the proposal would not provide a clear or significant public benefit. One commenter specifically urged that to satisfactorily demonstrate the public benefits of the proposal, United should, among other things, commit to make more community development lending and investments in LMI communities in the combined organization's service areas. However, in evaluating the public benefits of a proposal, the Board considers all benefits of the proposed transaction, not just those that benefit specific disadvantaged communities. See, e.g., *First Merit Corporation*, FRB Order No. 2013-3 (March 22, 2013).

areas. In this regard, United represents that 28 percent of its ATM transactions are from ATMs in LMI and middle-income distressed census tracts. United further notes that its ATMs offer a Spanish language option.

#### *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 United, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the mortgage and small business lending operations and compliance programs of Fairfax Bank, Parkersburg Bank, and VC Bank, and its review of examination reports, 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 United 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.”<sup>45</sup>

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.<sup>46</sup> 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.<sup>47</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, United would have approximately \$11.6 billion in consolidated assets, and, by any of a number of alternative measures of firm size, United would be outside the 100 largest U.S. financial institutions. 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

<sup>45</sup> 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).

<sup>46</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>47</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

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 100 U.S. financial institutions in terms of those metrics. For example, United'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 those services would have a significant 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.

### **Other Considerations**

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

### **Conclusion**

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>48</sup> 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 United with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application, including the submission and implementation of the program for improved performance. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 12, 2013.

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<sup>48</sup> The commenters requested that the Board hold public hearings 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 commenters' requests 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 commenters' requests do not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposal are denied.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Orders Issued Under Section 4 of the Bank Holding Company Act

Investors Bancorp, MHC  
Short Hills, New Jersey

Investors Bancorp, Inc.  
Short Hills, New Jersey

*Order Approving the Acquisition of a Mutual Savings and Loan Holding Company  
FRB Order No. 2013-16 (December 23, 2013)*

Investors Bancorp, MHC (“Investors MHC”), and Investors Bancorp, Inc. (“Investors Bancorp,” and jointly with Investors MHC, “Investors”), both of Short Hills, New Jersey, have requested the Board’s approval under section 4(c)(8) and 4(j) of the Bank Holding Company Act of 1956, as amended (“BHC Act”), and section 225.4 of the Board’s Regulation Y<sup>1</sup> to acquire Gateway Community Financial, MHC (“Gateway MHC”) and its wholly-owned subsidiary, Gateway Community Financial Corporation (“GCF,” and jointly with Gateway MHC, “Gateway”), and thereby indirectly acquire Gateway’s subsidiary savings association, GCF Bank, all of Sewell, New Jersey. Immediately following the proposed acquisition, GCF Bank would be merged into Investors Bancorp’s subsidiary bank, Investors Bank, Short Hills, New Jersey.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 35271 (2013)). 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 4 of the BHC Act.

Investors, with consolidated assets of approximately \$15.4 billion, is the 77th largest insured depository organization in the United States, controlling approximately \$10 billion in consolidated deposits. Investors Bank operates in New Jersey and New York. Investors Bank is the 10th largest depository institution in New Jersey, controlling deposits of approximately \$8.7 billion, which represent 3 percent of the total deposits of insured depository institutions in the state.<sup>3</sup> Investors Bank is the 53rd largest insured depository institution in New York, controlling deposits of approximately \$1.3 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the state.

GCF, with total consolidated assets of \$301 million, controls GCF Bank, which operates in New Jersey. GCF Bank is the 77th largest insured depository institution in New Jersey, controlling deposits of approximately \$272 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

<sup>1</sup> 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

<sup>2</sup> The merger of GCF Bank into Investors Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) under the Federal Deposit Insurance Act. The FDIC approved the merger on December 12, 2013.

<sup>3</sup> Deposit data are as of June 30, 2013. Asset data are as of September 30, 2013. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

On consummation of this proposal, Investors would remain the 77th largest depository organization in the United States, controlling consolidated assets of approximately \$15.7 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. In New Jersey, Investors Bank would remain the seventh largest insured depository institution, controlling deposits of approximately \$9 billion, which would represent 3 percent of the total deposits of insured depository institutions in the state.

### Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>4</sup> The Board requires that savings associations acquired by bank holding companies or financial holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.<sup>5</sup> Investors has committed that Gateway and the nonbanking subsidiary that Investors proposes to acquire engage in activities that will conform to those permissible under section 4 of the BHC Act and Regulation Y.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Gateway “can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system.”<sup>6</sup> As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.<sup>7</sup> In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”). In cases involving the interstate acquisition of an insured depository institution under section 4(c)(8) of the BHC Act, the Board must also consider the concentration of deposits on a nationwide basis.<sup>8</sup>

<sup>4</sup> 12 CFR 225.28(b)(4)(ii).

<sup>5</sup> A savings association operated by a bank holding company may engage only in activities that are permissible for bank holding companies under section 4(c)(8) of the BHC Act. 12 CFR 225.28(b)(4). In this instance, Investors will immediately merge GCF Bank into Investors Bank and will not operate the savings association independently.

<sup>6</sup> 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1601 (2010), (“Dodd-Frank Act”) added the “risk to the stability of the United States banking or financial system” to the list of possible adverse effects.

<sup>7</sup> See 12 CFR 225.26; see, e.g., *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); and *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

<sup>8</sup> The Dodd-Frank Act amended section 4 of the BHC Act to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target 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 amount of deposits of insured depository institutions in the United States. Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8). For purposes of the BHC Act, the home state of both Investors and Gateway is New Jersey and, therefore, section 4(i)(8) of the BHC Act does not apply to this transaction. Also, as noted, consummation of the proposal would result in Investors controlling less than 1 percent of the total amount of deposits of U.S. insured depository institutions.

### Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board has reviewed the competitive effects of Investors' acquisition of Gateway, in light of all the facts of record. Investors and Gateway compete directly in the Philadelphia, Pennsylvania banking market.<sup>9</sup> The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Investors and Gateway,<sup>10</sup> 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 Bank Merger Competitive Review Guidelines ("DOJ Bank Merger Guidelines"),<sup>11</sup> and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds of the DOJ Bank Merger Guidelines in the Philadelphia banking market. On consummation of the proposal, the Philadelphia banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain.<sup>12</sup> 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 market in which Investors and Gateway compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations weigh in favor of approval.

### Financial, Managerial, and Other Supervisory Considerations

The Board considered the financial condition of the organizations involved on both a parent-only and a 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

<sup>9</sup> The Philadelphia, Pennsylvania banking market is defined as Bucks, Chester, Delaware, Montgomery, and Philadelphia counties, all in Pennsylvania, and Burlington, Camden, Cumberland, Gloucester, and Salem counties, all in New Jersey (the "Philadelphia banking market").

<sup>10</sup> 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), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

<sup>11</sup> 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](http://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.

<sup>12</sup> Investors operates the 28th largest depository institution in the Philadelphia banking market, controlling deposits of approximately \$462 million, which represent less than 1 percent of market deposits. GCF operates the 62nd largest depository institution in the market, controlling deposits of approximately \$272 million, which represent less than 1 percent of market deposits. On consummation, Investors Bank would operate the 19th largest depository institution in the market, controlling weighted deposits of approximately \$734 million, which represent less than 1 percent of market deposits. The HHI would decrease by 2 points to 1034.

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. Investors and Investors Bank are well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction involves two holding company mergers. In the first merger, Gateway MHC would merge with and into Investors MHC. In the second merger, GCF, Gateway MHC's wholly-owned subsidiary, would merge with and into Investors Bancorp. After the merger of GCF into Investors Bancorp, Investors Bancorp will issue a number of shares of common stock to Investors MHC equal in value to the pro forma market value of Gateway MHC and its subsidiaries, as determined by an independent appraiser, for the benefit of Gateway MHC's depositors. Investors is in satisfactory condition, and the asset quality, earnings, and liquidity of Investors Bank and GCF Bank weigh in favor of approval. Based on its review of the record, the Board finds that the organizations have 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 Investors, Investors Bank, Gateway, and GCF 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 Investors' plans for implementing the proposal.

Investors and Investors Bank are considered to be managed well. Investors' existing risk-management program and its directorate and senior management weigh in favor of approval. The directors and senior executive officers of Investors have substantial knowledge and experience in the banking and financial services sectors.<sup>13</sup> There will be no changes in the senior management of Investors following consummation of the proposed transaction.

On December 2, 2013, the Board approved Investors MHC's proposal to acquire two other insured depository institutions in the New Jersey and New York markets. Also, in 2012, Investors successfully integrated the banking operations of two insured depository institutions located in the New York, New York, market into its operations. Investors is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Investors would implement its risk-management policies, procedures, and controls at the combined organization. In addition, Investors' management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Investors is proposing to integrate GCF Bank's existing management and personnel in a manner that augments Investors Bank's management.

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<sup>13</sup> On consummation, Investors' board of directors will include three additional directors from GCF's current board of directors. In addition, Investors Bank will form an advisory board consisting of all of the current GCF Bank directors that will advise Investors Bank on the GCF Bank market areas, deposit and lending activities, and customer relationships.

Investors' integration record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors weigh in favor of 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 on balance weigh in favor of approval, as do the other supervisory factors.

### **Records of Performance Under the CRA and Fair Lending Laws**

The CRA<sup>14</sup> requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation.<sup>15</sup> The CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the convenience and needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.<sup>16</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of Investors Bank and GCF Bank, data reported by Investors Bank and GCF Bank under the Home Mortgage Disclosure Act ("HMDA"),<sup>17</sup> other information provided by Investors, confidential supervisory information, and the public comment received on the proposal. The commenter objected to the proposal on the basis of the mortgage lending records of Investors Bank and GCF Bank as reflected in 2011 HMDA data.

#### *A. CRA Performance Evaluations*

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.<sup>18</sup> 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.<sup>19</sup> 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 Investors Bank.* Investors Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in August 2011 ("Investors Evaluation"). Examiners concluded that Investors Bank demonstrated an adequate responsiveness to the credit needs of its assessment areas.<sup>20</sup> Investors Bank received "high satisfac-

<sup>14</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>15</sup> 12 U.S.C. § 2901(b).

<sup>16</sup> 12 U.S.C. § 2903.

<sup>17</sup> 12 U.S.C. § 2801 *et seq.*

<sup>18</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

<sup>19</sup> 12 U.S.C. § 2906.

<sup>20</sup> Examiners put the most weight on Investors Bank's 1-4 family lending performance in the New York/New Jersey Multistate assessment area because of Investors Bank's significant presence in that area.

tory” ratings on the Lending Test, the Investment Test, and the Service Test.<sup>21</sup> The FDIC assigned Investors Bank a rating of “high satisfactory” for the Lending Test, noting that the bank’s lending activity was good. Examiners found that Investors Bank’s geographic distribution of loans was adequate, emphasizing the bank’s concentration within the New York/New Jersey Multistate area and in residential real estate lending. Examiners also determined that Investors Bank had a good record of lending inside its assessment areas by number and dollar amount of loans. Examiners found that Investors Bank’s community development lending performance was excellent. Examiners noted that Investors Bank was a leader in making community development loans, originating 32 development loans totaling \$104.5 million for the period from June 2008 through August 2011. Furthermore, examiners highlighted Investors Bank’s issuance of community development loans in the New York/New Jersey Multistate Metropolitan assessment area, which had the greatest weight of all areas in the analysis. Examiners also noted that Investors Bank engaged in innovative lending, where the bank offered down-payment assistance forgivable loans and down-payment assistance grants below market interest rate, without closing costs and with extended loan terms.

Concerning the Investment Test, examiners highlighted Investors Bank’s significant level of qualified community development investments and grants in its assessment areas. In particular, examiners highlighted Investors Bank’s purchase of mortgage-backed securities that consisted of underlying mortgage loans originated to LMI borrowers, as well as an equity investment by Investors Bank to establish the Investors Bank Charitable Foundation, which supports charitable causes and community development activities through grants and donations to cultural, educational, and social service organizations.

For the Service Test, examiners noted retail banking services were accessible to essentially all segments of Investors Bank’s assessment areas, including LMI geographies. Examiners further emphasized that Investors Bank provided a relatively high level of community development services that were responsive to a variety of community development needs.

*CRA Performance of GCF Bank.* The Office of the Comptroller of the Currency (“OCC”) assigned GCF Bank an overall CRA rating of “satisfactory” with ratings of “satisfactory” for the Lending Test and “satisfactory” for the Community Development Test at its most recent CRA examination on January 2, 2013.<sup>22</sup> With respect to the Lending Test, examiners noted that the bank’s loan-to-deposit ratio was reasonable, and a majority of home mortgage loans, GCF Bank’s primary loan product, were made within its assessment area. The examiners concluded that GCF Bank had reasonable penetration among borrowers of different income levels. Because there were no low-income tracts within the assessment area and only six moderate-income tracts, geographical distribution of home mortgage loans was not heavily weighted by the examiners. The examiners did note, however, that they did not detect any conspicuous or unexplained gaps in the bank’s lending patterns.

Concerning the Community Development Test, examiners found that GCF Bank’s level of community development activities was adequate given its size, capacity, and the community development needs and opportunities of its assessment areas. Examiners noted that, during the evaluation period, GCF Bank provided \$630,000 in community development loans, donated \$13,651 to community development organizations, and purchased \$2.4 million in

<sup>21</sup> The evaluation period for the Lending Test in the Investors Evaluation was January 1, 2009 to June 30, 2011, except for community development loans, for which the evaluation period was from June 23, 2008 through August 9, 2011. The evaluation period for the Investment and Service Tests was from June 23, 2008 through August 9, 2011.

<sup>22</sup> The evaluation periods were from January 1, 2010 through December 31, 2011 for the Lending Test and from November 23, 2009 through January 2, 2013 for the Community Development Test.

CRA-qualified investments to help meet the community development needs of its assessment area. In addition, examiners found that GCF Bank personnel provided leadership and/or financial expertise to five community development organizations serving GCF Bank's assessment areas.

*Investors Bank's Efforts Since the 2011 CRA Evaluation.* According to Investors, since the Investors Evaluation, Investors Bank has increased its investment in CRA-qualified FNMA Mortgage Backed Securities, serving the credit needs of LMI borrowers within its assessment areas. Investors Bank currently plans to invest 1 percent of its assets in qualified community development investments and grants and has increased its percentage of assets invested from \$57 million (0.59 percent of its assets) as of March 31, 2011, to \$132 million (1.04 percent of its assets) as of February 28, 2013.<sup>23</sup> In addition, Investors stated that, in 2012, Investors Bank provided 186 small business loans totaling almost \$54 million in its assessment areas. Investors also reported that, in 2012, Investors Bank provided 152 community development loans totaling over \$435 million in its assessment areas. Moreover, the FDIC reviewed Investors Bank's CRA performance in its review of the related Bank Merger Act application and found no inconsistencies with the purposes of the CRA.

#### B. Fair Lending Record, HMDA Analysis, and Public Comment on the Application

The Board has also considered the records of Investors Bank and GCF Bank in complying with fair lending and other consumer protection laws. This includes a review of their performance as detailed in the Investors, Gateway, and GCF Bank Evaluations. This also includes an evaluation of Investors Bank's fair lending policies and procedures and consideration of other agencies' views on Investors Bank's record of performance under fair lending laws. The Board also has taken into account the comment on the application.

*Investors Bank's Fair Lending Program.* The Board considered information about Investors Bank's compliance and risk-management systems and the steps it has taken to ensure compliance with fair lending laws. Investors Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. Given its recent growth through acquisitions, Investors Bank has recognized the need to ensure that its policies and procedures keep pace to ensure continued effective compliance, and it has increased its compliance staff since January 2013 from two to five people, which include a Director of Compliance, two Compliance Officers, and two Compliance Analysts.

Investors Bank recently underwent a fair lending risk assessment to analyze potential vulnerabilities in loan processes and controls. Investors Bank's legal and compliance risk-management program includes (1) procedures to evaluate new laws and regulations to determine applicability to Investors' mortgage operations, (2) ongoing fair lending training for lending-related personnel, (3) consumer compliance training for the Board of Directors after changes in law or in Investors Bank's product line, (4) compliance reviews for all fair lending complaints, (5) a second review and second signature for all loan applications initially recommended for denial, and (6) a Chief Lending Officer review and Board of Directors ratification of any exceptions to the loan policy guidelines. Investors Bank's risk-management systems and policies and procedures for assuring compliance with fair lending laws will be implemented at the combined organization.

HMDA Analysis and Public Comment on the Application. The commenter cited 2011 HMDA data and alleged that Investors Bank made fewer conventional home purchase

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<sup>23</sup> Investors represents that Investors Bank has invested over 1 percent of its assets in CRA-qualified FNMA Mortgage Backed Securities each quarter from June 30, 2012 through February 28, 2013.

loans to African American applicants than to white applicants and fewer refinance loans to African American and Hispanic applicants than to white applicants in the New York and Long Island Metropolitan Statistical Areas (“MSAs”). The commenter also asserted that, in the New York MSA, Investors Bank disproportionately denied applications by Hispanic applicants for conventional home purchase loans and refinance loans. In addition, the commenter alleged that GCF Bank made fewer conventional home purchase, refinance, and home improvement loans to African American and Hispanic applicants than to white applicants in the Camden, New Jersey MSA.s

The Board has reviewed HMDA data from 2011 reported by Investors Bank and GCF Bank, the most recent publicly available data. 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 and refinance loans, which were the subjects of the public comment received on the proposal. Within those data sets, the Board focused its review on data related to loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

With respect to Investors Bank and GCF Bank, the Board confirmed the levels of conventional home purchase loans and the denial disparity ratios associated with conventional home purchase and refinance loans noted by the commenter.

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 Investors Bank or GCF Bank have excluded or denied credit to any group on a prohibited basis.<sup>24</sup>

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 Investors Bank and GCF Bank with fair lending laws and regulations. The Board also has consulted with the OCC, the FDIC, and the Consumer Financial Protection Bureau (“CFPB”) about this proposal.

With respect to the specific HMDA data on conventional home purchase and refinance mortgages cited by the commenter, Investors provided information on Investors Bank’s nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). Investors also provided the Board with detailed information on Investors Bank’s training, marketing, advertising, and underwriting guidelines reflecting its stated commitment to the prevention of prescreening, discouragement, and exclusion of credit applications on a prohibited basis.

With respect to the specific HMDA data on conventional home purchase or home improvement loans cited by the commenter, Investors provided information on GCF Bank’s non-

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<sup>24</sup> 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.

discriminatory reasons for individual lending decisions (i.e., credit history and debt-to-income ratio).

The Board also consulted with the FDIC and the CFPB with respect to Investors Bank's record of fair lending performance since the Investors Evaluation. The FDIC reported, based on its review of supervisory information, that it did not find evidence that Investors Bank engaged in discriminatory conduct during the period before which the CFPB assumed jurisdiction over federal consumer financial laws.<sup>25</sup> The FDIC has indicated that the bank's operations and compliance program were compliant with fair lending and other consumer protection laws for the time period reviewed by the FDIC.

### C. Conclusion on CRA, Fair Lending, and HMDA Review

The Board has considered all of the facts of record, information provided by Investors, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of Investors Bank's and GCF Bank's mortgage lending operations and compliance programs, its review of examination reports, the CRA records of the institutions involved, and its consultations with the OCC, the FDIC, and the CFPB, the Board concludes that the CRA and fair lending records of Investors Bank and GCF Bank on balance weigh in favor of approval. The Board encourages Investors Bank to continue to seek opportunities to assist in meeting the credit needs of the communities it serves.

On December 2, 2013, the Board approved Investors' acquisition of Roma Financial Corporation, MHC, Roma Financial Corporation, Roma Bank, and RomAsia Bank (collectively, "Roma"). In approving the acquisition of Roma by Investors, the Board conditioned its approval by requiring the audit committee of the board of directors of Investors Bancorp to undertake certain review actions. In this case, the Board believes that it is also appropriate, in connection with the acquisition of Gateway, for Investors to enhance its consumer compliance program and policies to account for the size, complexity, and diversification of the business lines that would result from this acquisition and the acquisition of Roma. Accordingly, as a condition of its approval, the Board has determined that the audit committee of the board of directors of Investors Bancorp must issue a written report to the board of directors of Investors Bancorp that shall include: an assessment of Investors Bank's consumer compliance risk systems, processes, and procedures; an assessment of compliance with any reports or recommendations made by any state or federal agency issued in the last five years with respect to consumer compliance; and recommendations for improving the consumer compliance risk program, if necessary. The report shall be issued to the board of directors of Investors Bancorp not later than April 1, 2014, with copies to Investors Bank senior management and the Board of Governors. Compliance with this condition, and with the recommendations made by the audit committee, will be monitored as part of the supervisory process.

### Financial Stability

The Dodd-Frank Act added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects that the Board must weigh against any expected public benefits in considering proposals under section 4(j) of the BHC Act.<sup>26</sup> To

<sup>25</sup> See 12 U.S.C. § 5481(14).

<sup>26</sup> Dodd-Frank Act, § 604(e), codified at 12 U.S.C. § 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. See sections 163, 173, and 604(d) and (f) of the Dodd-Frank Act.

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.<sup>27</sup> 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, which 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.<sup>28</sup>

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, Investors would have approximately \$15.7 billion in consolidated assets, and by any of a number of alternative measures of firm size, Investors Bank would be the 77th largest U.S. insured depository organization. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results 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 Board, therefore, concludes that financial stability considerations relating to this proposal weigh in favor of approval.

#### **Additional Public Benefits of the Proposal**

The Board has also considered the extent to which the proposal would benefit the customers of Investors Bank and GCF Bank. Among other things, 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 any of the parties.

The merger would extend the branch and ATM footprints of Investors Bank and GCF Bank within the New Jersey market, allowing customers greater geographic flexibility in accessing banking services. The applicants also have plans to add drive-up ATMs and night depositories at all Gateway branch locations, thereby offering customers “24-7” access to certain banking services. Loan customers will be able to benefit from larger loan-to-one borrower limits with Investors Bank’s larger capital base.

Investors expects that the proposal would result in cost savings for the combined organization by eliminating redundant back-office costs, professional expenses, occupancy expenses, data processing charges, marketing costs, and other redundant expenses. Investors has noted that these savings would be reinvested back into the current operations of various projects of the combined organization.

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<sup>27</sup> Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

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

Investors also expects that, as a result of the merger, GCF Bank's customers would have access to a variety of consumer and business services, some of which are not currently offered by GCF Bank due to its small scale, such as a Client Care Center and certain mobile and online banking products. Investors is also planning a robust client outreach for the GCF Bank market to support the transition of the client base and identify additional credit and deposit needs that are not currently available in that market from GCF Bank.

The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order are not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, including the commitments made in this case and the conditions noted in this order, and for the reasons discussed above, the Board believes that the factors related to competition, financial and managerial resources, convenience and needs, and financial stability weigh in favor of approval of this case. Accordingly, the Board has determined that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.<sup>29</sup> 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 Investors 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. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>30</sup> and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated 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 New York, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 23, 2013.

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<sup>29</sup> The public commenter requested that the Board hold a public hearing on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). 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 a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

<sup>30</sup> 12 CFR 225.7 and 225.25(c).

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

Robert deV. Frierson  
*Secretary of the Board*

## Orders Issued Under Bank Merger Act

### First Farmers Bank & Trust Converse, Indiana

#### *Order Approving the Acquisition of Assets, Assumption of Liabilities, and Establishment of Branches*

*FRB Order No. 2013–8 (October 4, 2013)*

First Farmers Bank & Trust (“First Farmers”), Converse, Indiana,<sup>1</sup> a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act<sup>2</sup> (“Bank Merger Act”) to acquire certain assets and assume certain liabilities of the Bank of Indiana (“Bank of Indiana”), National Association, Dana, Indiana. In addition, First Farmers has applied under section 9 of the Federal Reserve Act (“FRA”)<sup>3</sup> to establish and operate branches at the locations of the four acquired branches of Bank of Indiana.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.<sup>5</sup> The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act and the FRA.

First Farmers is the 25th largest insured depository institution in Indiana, controlling deposits of approximately \$778.5 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in Indiana (“state deposits”).<sup>6</sup> First Farmers proposes to acquire all of Bank of Indiana’s deposits, which represent less than 1 percent of state deposits. On consummation of the proposal, First Farmers would become the 23rd largest insured depository institution in Indiana, controlling deposits of approximately \$861.9 million, representing less than 1 percent of state deposits.<sup>7</sup>

### Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.<sup>8</sup> The Bank Merger Act also prohibits the Board from approving a

<sup>1</sup> First Farmers is a subsidiary of First Farmers Financial Corporation (“FFFC”), also of Converse, Indiana, a financial holding company.

<sup>2</sup> 12 U.S.C. § 1828(c).

<sup>3</sup> 12 U.S.C. § 321.

<sup>4</sup> Bank of Indiana branches to be acquired are located at (1) 129 Maple Street, Dana, (2) 42 South State Road 135, Bargersville, (3) 100 East Short Street, Hamlet, and (4) 302 Keller Avenue, North Judson, all in Indiana.

<sup>5</sup> 12 CFR 262.3(b).

<sup>6</sup> Data are as of June 30, 2012. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

<sup>7</sup> At June 30, 2013, Bank of Indiana controlled approximately \$83.4 million in deposits.

<sup>8</sup> 12 U.S.C. § 1828(c)(5)(A).

proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.<sup>9</sup>

First Farmers and Bank of Indiana compete directly in the Indiana banking markets of Starke County, Terre Haute, and Indianapolis.<sup>10</sup> The Board has reviewed the competitive effects of the proposal in those 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 share of the total deposits in insured depository institutions in the market (“market deposits”) that First Farmers would control,<sup>11</sup> the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),<sup>12</sup> and other characteristics of the markets.

In the Terre Haute and Indianapolis banking markets, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines. On consummation of the proposal, the Terre Haute and Indianapolis banking markets would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the banking market.<sup>13</sup>

In the Starke County banking market, First Farmers is the third largest insured depository institution, controlling deposits of approximately \$54.3 million, which represent approxi-

<sup>9</sup> 12 U.S.C. § 1828(c)(5)(B).

<sup>10</sup> The Starke County banking market is defined as Starke County, Indiana. The Terre Haute banking market is defined as Clay, Vigo, and Sullivan Counties; Clinton and Helt townships in Vermillion County; and Florida, Racoon, and Jackson townships in Parke County, all in Indiana. The Indianapolis banking market is defined as Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, and Shelby Counties, and Green Township in Madison County, all in Indiana.

<sup>11</sup> Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2012, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board has previously 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* 53 (1991). No savings associations operate in the Starke County banking market.

<sup>12</sup> Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>13</sup> In the Terre Haute banking market, First Farmers operates the eighth largest insured depository institution, controlling deposits of approximately \$31.4 million, which represent 1.4 percent of market deposits. The branch First Farmers proposes to acquire currently controls \$39.2 million in deposits. After consummation, First Farmers would become the seventh largest insured depository institution in the market, controlling deposits of approximately \$70.6 million, which represent 3.0 percent of market deposits. The HHI would increase by four points, from 3298 to 3302. On consummation of the proposal, nine competitors would remain in the market.

In the Indianapolis banking market, First Farmers operates the 35th largest insured depository institution, controlling deposits of approximately \$31.1 million, which represent less than 1 percent of market deposits. The branch First Farmers proposes to acquire currently controls \$38.1 million in deposits. After consummation, First Farmers would become the 30th largest insured depository institution in the market, controlling deposits of approximately \$69.1 million, which represent less than 1 percent of market deposits. The HHI would not increase in this market. On consummation of the proposal, 43 competitors would remain in the market.

mately 21.9 percent of market deposits. Bank of Indiana is the fifth largest insured depository institution in the market, controlling deposits of approximately \$14.8 million, which represent approximately 6 percent of market deposits. On consummation of the proposal, First Farmers would become the second largest depository institution in the Starke County banking market, controlling deposits of approximately \$69.1 million, which would represent 27.9 percent of market deposits. The HHI would increase 262 points, from 2170 to 2432.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market.<sup>14</sup> In this market, there are several such factors. On consummation, four other insured depository institutions, including three institutions that each control more than 10 percent of the market deposits, would continue to operate in the market, including the market's largest competitor, 1st Source Bank, with 28.4 percent of market deposits.

The Board also has considered the financial condition of Bank of Indiana. Bank of Indiana's financial condition has deteriorated in recent years. Bank of Indiana is party to a formal agreement with its primary federal supervisor, the Office of the Comptroller of the Currency ("OCC").<sup>15</sup> As a result, Bank of Indiana may be exerting less competitive pressure than its market share would indicate, and consummation of this transaction would not substantially lessen competition in the Starke County banking market.

The DOJ conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation would not be likely to have a significantly adverse effect on competition in any relevant banking 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 Starke County, Terre Haute, or Indianapolis banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

### **Financial, Managerial, and Other Supervisory Factors**

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved and the organizations' nonbanking operations. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, 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 cost 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.

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

<sup>15</sup> Indiana Bank Corp., the parent bank holding company of Bank of Indiana, has filed for chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Indiana. On May 30, 2013, the court approved the sale of certain assets and liabilities of Bank of Indiana to First Farmers.

First Farmers is well capitalized and would remain so on consummation of the proposal. FFFC will incur a small amount of debt that will be injected into the resulting bank as new capital. The Board has concluded that FFFC has the resources to ensure timely repayment of the debt. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that First Farmers has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of First Farmers and has reviewed the examination records of First Farmers, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and First Farmers' record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered First Farmers' plans for implementing the proposal. First Farmers is considered to be well managed, and its board of directors and senior management have significant banking experience. First Farmers would operate the acquired branches under its existing policies and procedures, which are considered to be adequate. In addition, the Board has considered the integration of First Farmers' 2012 acquisition of a similarly sized organization with the acquisition of problem assets in Illinois. Examiners noted that management was capable of addressing the increased problem assets in a timely and effective manner.

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

#### **Convenience and Needs Considerations**

The Bank Merger Act also requires the Board to consider the convenience and needs of the communities to be served and to take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>16</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank acquisition proposals. Accordingly, the Board has considered the convenience and needs factor and the CRA performance records of First Farmers and Bank of Indiana in light of all the facts of record.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>17</sup>

First Farmers received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Chicago, as of February 2012. Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. In addition, the geographic distribu-

<sup>16</sup> 12 U.S.C. § 2901 *et seq.*

<sup>17</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642 at 11,665 (2010).

tion of loans reflected reasonable dispersion throughout the assessment area, and the distribution of loans represents reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners further determined that the bank demonstrated adequate responsiveness to the community development needs of its assessment area. Bank of Indiana received an overall rating of “satisfactory” at its most recent CRA performance examination by the OCC, as of November 2011. First Farmers has represented that it would implement its policies at the acquired branches. This proposal would result in customers continuing to have access to banking services in their immediate communities.

Based on all the facts of record and for the reasons discussed above, the Board concludes that considerations relating to convenience and needs, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.

### **Financial Stability**

The Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results 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 case. The Board, therefore, concludes that financial stability considerations in this proposal are consistent with approval.

### **Establishment of Branches**

As noted, First Farmers has applied under section 9 of the FRA to establish branches at the current locations of the Bank of Indiana, and the Board has considered the factors it is required to consider when reviewing an application under that section.<sup>18</sup> Specifically, the Board has considered First Farmers’ financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act and the FRA. Approval of the applications is specifically conditioned on compliance by First Farmers with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

Acquisition of the branches 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 by the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

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<sup>18</sup> 12 U.S.C. § 322; 12 CFR 208.6.

By order of the Board of Governors, effective October 4, 2013.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Green Dot Bank Provo, Utah

### *Order Approving the Acquisition of Assets and Assumption of Liabilities FRB Order No. 2013-10 (November 22, 2013)*

Green Dot Bank DBA Bonneville Bank, Provo, Utah, a state member bank, has applied under section 18(c) of the Federal Deposit Insurance Act<sup>1</sup> (“Bank Merger Act”) to purchase certain assets and assume certain deposit liabilities of GE Capital Retail Bank (“GECRB”), Draper, Utah, a federal savings bank.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been given in accordance with the Bank Merger Act and the Board’s Rules of Procedure.<sup>2</sup> The time for filing comments has expired. As required by the Bank Merger Act, a report on the competitive effects of the merger was also requested from the United States Attorney General and the Federal Deposit Insurance Corporation (“FDIC”). The Board has considered the application and all comments received in light of the factors set forth in the Bank Merger Act.

Green Dot Bank’s primary business activity is the issuance of general-purpose reloadable prepaid debit cards (“GPR cards”) and provision of settlement services for prepaid debit cards.<sup>3</sup> Green Dot Bank is a subsidiary of Green Dot Corporation (“Green Dot”), Pasadena, California, a financial holding company that provides services related to the provision of GPR cards. Green Dot Bank proposes to acquire assets and assume liabilities related to GPR cards issued by GECRB, sold at U.S.-based Wal-Mart stores and online through a website for the prepaid debit cards, and serviced by Green Dot pursuant to an agreement among the parties initially entered into in 2006 (“Wal-Mart Cards”).<sup>4</sup> As a result of the proposed transaction, Green Dot Bank would replace GECRB as the issuer of Wal-Mart Cards. Green Dot would provide the same services to Green Dot Bank that it currently provides to GECRB for the cards.

Green Dot Bank is the 37th largest insured depository institution in Utah, controlling deposits of approximately \$183 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in Utah (“state deposits”).<sup>5</sup> Green Dot Bank proposes to acquire approximately \$276 million in total deposits from GECRB, representing less than 1 percent of state deposits. On consummation of the proposal, Green Dot Bank would become the 30th largest insured depository institution in Utah, controlling deposits of approximately \$459 million, representing less than 1 percent of state deposits.

<sup>1</sup> 12 U.S.C. § 1828(c).

<sup>2</sup> 12 CFR 262.3(b).

<sup>3</sup> GPR cards issued by Green Dot Bank are network branded and linked to FDIC-insured accounts.

<sup>4</sup> A large majority of Green Dot’s GPR cards are sold through Wal-Mart. Green Dot’s percentage of revenue derived from sales through Wal-Mart stores was 64.1 percent for 2012.

<sup>5</sup> Deposit data are as of June 30, 2012, and reflect merger activity through August 1, 2013, including Green Dot Bank’s acquisition of approximately \$150 million of deposit liabilities of Synovus Bank in November 2012.

### **Competitive Considerations**

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.<sup>6</sup> The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.<sup>7</sup>

Green Dot Bank and GEGRB do not operate branches in any common geographic banking market.<sup>8</sup> This transaction would not raise concerns regarding competition among GPR card issuers, whose market for competition is national in scope.<sup>9</sup> Moreover, Green Dot already services the cards that are the subject of this transaction. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effects on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

### **Financial, Managerial, and Other Supervisory Factors**

In reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, 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 cost 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.

Green Dot Bank is well capitalized and would remain so on consummation of the proposal. As noted, the proposed transaction is structured as an acquisition of assets and assumption of liabilities. Green Dot Bank has represented that the transaction does not require Green Dot or Green Dot Bank to provide funds to GEGRB. 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 Green Dot Bank and reviewed the examination record of Green Dot Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and Green Dot Bank's record of compliance with applicable banking and anti-money-laundering laws. Green Dot Bank is considered to be well managed, and its board of directors and senior management have significant experience in the prepaid card industry and in community banking. The Board also has considered Green Dot

<sup>6</sup> 12 U.S.C. § 1828(c)(5)(A).

<sup>7</sup> 12 U.S.C. § 1828(c)(5)(B).

<sup>8</sup> Green Dot Bank operates one branch in the Provo-Orem, UT banking market, while GEGRB operates one branch in each of the Salt Lake City, UT and Metro New York City, NY-NJ-CT-PA banking markets.

<sup>9</sup> The Board estimates that a national GPR card market would be considered moderately concentrated and that the transaction would cause only a small change in market concentration.

Bank's successful implementation of a similar proposal<sup>10</sup> and its plans for implementing this proposal, including its plans for managing the integration of the acquired assets and assumed liabilities into the bank.

In addition, the Board has considered the future prospects of Green Dot Bank in light of the financial and managerial resources and the bank's business plan. As noted, Green Dot Bank's business activity is focused narrowly on the issuance of GPR cards. A business plan that focuses on a narrow business activity and depends on a limited number of key business partners carries significantly greater risks than a business plan that employs broad diversification of activities and counterparties. As indicated in its order approving Green Dot's acquisition of Green Dot Bank, the Board expects banking organizations with a narrow focus to address these increased risks with financial resources, managerial systems, and expertise commensurate with that additional level of risk.<sup>11</sup> The risk mitigants the Board relied on when it approved Green Dot's acquisition of Green Dot Bank would continue to be in place after the proposed transaction, and the proposal would not appear to adversely affect the future prospects of Green Dot Bank. Green Dot Bank would continue to maintain a tier 1 leverage ratio of at least 15 percent, which is appropriate in light of the narrow focus of Green Dot Bank's activity. Green Dot Bank has committed that deposits associated with general purpose reloadable cards, including deposits associated with Wal-Mart Cards, would continue to be balanced with equal levels of cash or cash equivalents.<sup>12</sup> Green Dot Bank also has committed to refrain from paying dividends for a certain period of time. Moreover, the Board has considered Green Dot's and Green Dot Bank's risk management systems and the Board's supervisory experiences, including examinations conducted at Green Dot and Green Dot Bank and commitments made by Green Dot and Green Dot Bank designed to maintain enhanced audit, governance, and risk management programs regarding its card business.<sup>13</sup>

In considering these factors, the Board has also consulted with the FDIC regarding the proposal. Based on all the facts of record, including supervisory and examination information from various U.S. banking supervisors, publicly reported and other financial information, and information and commitments provided by Green Dot Bank, the Board has concluded that considerations relating to the financial and managerial resources and future prospects involved in the proposal are consistent with approval, as are the other supervisory factors.

### **Convenience and Needs Considerations**

The Bank Merger Act also requires the Board to consider the convenience and needs of the communities to be served and to take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").<sup>14</sup> The CRA requires the federal financial supervisory agencies to encourage financial institutions to meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, includ-

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<sup>10</sup> The Federal Reserve Bank of San Francisco, pursuant to authority delegated by the Board, approved Green Dot Bank's proposal to acquire certain assets and assume certain liabilities of Synovus Bank, Columbus, Georgia, on October 4, 2012. The transaction was completed in November 2012.

<sup>11</sup> Green Dot Corporation, (order dated Nov. 23, 2011), 98 *Federal Reserve Bulletin* 29, 32 (4th Quar. 2011).

<sup>12</sup> The full amount of requisite cash or cash equivalents will be held in the account of Green Dot Bank.

<sup>13</sup> Green Dot Bank also has committed to maintain a strong audit program and strong corporate governance and to obtain the prior regulatory approval of the Federal Reserve for any proposed major deviation or material change from the business plan submitted with this proposal before consummation of the change.

<sup>14</sup> 12 U.S.C. § 2901 *et seq.*

ing low- and moderate-income neighborhoods, in evaluating bank acquisition proposals. Accordingly, the Board has considered the convenience and needs factor and the CRA performance records of Green Dot Bank and GECRB in light of all the facts of record.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>15</sup>

Green Dot Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of San Francisco, as of June 4, 2012, which was conducted using the Interagency Small Institution Examination Procedures. On March 26, 2013, the Board approved the bank's request to operate under a CRA Strategic Plan for the period of 2012 through 2014.<sup>16</sup> GECRB received an overall rating of "Outstanding" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, as of December 31, 2012. After consummation of the proposal, Green Dot Bank would continue to operate under its current CRA policies.

Cardholders whose Wal-Mart Card accounts are acquired from GECRB would have continuous access to their account funds throughout the transition to Green Dot Bank.<sup>17</sup> Green Dot Bank would expand the features available to Wal-Mart Card cardholders not currently supported by GECRB. In particular, Green Dot Bank would provide a traditional bill payment feature, in which the cardholder could pay bills via automated clearing-house fund transfers, and a check-writing feature, in which the cardholder could electronically complete checks that Green Dot Bank would print and mail to any payee designated by the cardholder.<sup>18</sup> Green Dot Bank is developing additional features for the Wal-Mart Cards, including a budget management feature that would allow cardholders to set aside funds loaded onto the Wal-Mart Card.

Based on all the facts of record and for the reasons discussed above, the Board concludes that considerations relating to convenience and needs, including the CRA performance records of the relevant depository institutions, are consistent with approval of the proposal.

### **Financial Stability**

The Board has considered information relevant to risk to the stability of the United States banking or financial system. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results 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 addi-

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<sup>15</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642 at 11,665 (2010).

<sup>16</sup> Under 12 CFR 228.27, depository institutions may choose to be evaluated under a strategic plan for CRA purposes as an alternative to the traditional and more comprehensive CRA evaluation. The strategic plan sets measurable goals for the depository institution's performance, subject to approval by its primary supervisor prior to the depository institution's CRA evaluation.

<sup>17</sup> Green Dot Bank will provide Wal-Mart Card cardholders with notices and disclosures explaining the changes to their card agreements and issuing bank. Green Dot will provide a full refund to cardholders who elect not to agree to Green Dot Bank as the card issuer.

<sup>18</sup> Green Dot Bank states that the check-writing feature is especially helpful for payments to payees that prefer to receive paper checks, such as payments for rent.

tional risk factors are not present in this case. The Board, therefore, concludes that financial stability considerations in this proposal 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. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the Bank Merger Act. Approval of the application is specifically conditioned on compliance by Green Dot Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

The transaction 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 by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

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

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Orders Issued Under International Banking Act

Banco BPI, S.A.  
Porto, Portugal

*Order Approving Establishment of Representative Offices*  
*FRB Order No. 2013-9 (November 18, 2013)*

Banco BPI, S.A. (“Bank”), Porto, Portugal, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA<sup>1</sup> to establish representative offices in Newark, New Jersey, and New Bedford, Massachusetts. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to submit comments, has been published in a newspaper of general circulation in Newark, New Jersey (*New Jersey Star Ledger*, August 22, 2012), and in New Bedford, Massachusetts (*New Bedford Standard-Times*, August 21, 2012). The time for filing comments has expired, and all comments received have been considered.

Bank, with total consolidated assets of approximately \$56.2 billion, is the fourth largest bank in Portugal.<sup>2</sup> Bank engages in a range of commercial and retail banking activities in

<sup>1</sup> 12 U.S.C. § 3107(a).

<sup>2</sup> Data are as of June 30, 2013.

Portugal and internationally. Outside Portugal, Bank operates branches in Spain, France, Macau, and the Cayman Islands, and representative offices in Canada, Venezuela, Germany, France, the United Kingdom, Switzerland, and South Africa. Bank operates banks in the Cayman Islands, Angola, and Mozambique. Bank also operates a subsidiary bank in Portugal that operates branches in Spain and Switzerland. In the United States, Bank operates a money remitter subsidiary.<sup>3</sup>

Bank's largest shareholder, CaixaBank, S.A. ("CaixaBank"), a subsidiary of Caja de Ahorros y Pensiones de Barcelona ("La Caixa"), both of Barcelona, Spain, owns approximately 46 percent of Bank. La Caixa is an integrated financial group with banking, insurance, pension, and investment fund activities, as well as holdings in international banks. Outside Spain, CaixaBank has branches in Morocco, Poland, and Romania. CaixaBank operates five representative offices in Europe, three in Asia, four in the Middle East, and one in South America. CaixaBank has no operations in the United States.<sup>4</sup> Bank's second largest shareholder, Prestação de Serviços, S.A. ("Santoro Finance"), a subsidiary of Santoro Financial Holdings, SGPS, both of Lisbon, Portugal, owns approximately 19.5 percent of Bank. Santoro Finance provides consulting services, including economic consulting, accounting, marketing, advertising, and business management. Allianz Europe, Amsterdam, The Netherlands, and Companhia de Seguros Allianz Portugal, Lisbon, Portugal, subsidiaries of Allianz SE, Munich, Germany, collectively own approximately 8.8 percent of Bank. Allianz SE is an international financial services company that offers a range of insurance and asset management products and services. No other shareholder owns 5 percent or more of Bank's shares.

The proposed representative offices would serve as liaisons between Bank and its customers. The proposed representative offices would also conduct research and assemble credit information, solicit banking business for Bank, perform back-office functions, provide information to customers, and perform loan servicing functions.<sup>5</sup>

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

<sup>3</sup> The Bank will close the money remitter upon commencement of business at the Bank's representative offices.

<sup>4</sup> CaixaBank owns approximately 16.4 percent of the share capital of the Bank of East Asia Limited ("BEA"), Hong Kong, which is a bank holding company for the purposes of the Bank Holding Company Act of 1956 ("BHC Act"), as amended. CaixaBank executed passivity commitments to demonstrate to the Board that CaixaBank's ownership in BEA coupled with its business relationships would not enable CaixaBank and its affiliates to exercise a controlling influence over BEA for the purposes of the BHC Act. In July 2013, CaixaBank submitted an application to open a representative office in New York.

<sup>5</sup> 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).

<sup>6</sup> 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings 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

may also consider additional standards set forth in the IBA and Regulation K.<sup>7</sup> The Board may consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities. This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.<sup>8</sup> This application has been considered under the lesser standard.

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

With respect to supervision by home country authorities, the Board has considered that Bank is supervised by the Bank of Portugal. The Board previously has considered the supervisory regime in Portugal for financial institutions in connection with applications involving other Portuguese banks.<sup>9</sup> Bank is supervised by the Bank of Portugal on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative offices, taking into account the nature of such activities. The Bank of Portugal has no objection to the proposed representative offices.

With respect to supervision of La Caixa and CaixaBank, the Board previously has considered the supervisory regime in Spain for financial institutions in connection with applications involving other Spanish banks.<sup>10</sup> La Caixa and CaixaBank are supervised by their home country supervisor, the Bank of Spain, on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that La Caixa and CaixaBank are subject to a supervisory framework consistent with the activities of the proposed representative offices.

With respect to the financial and managerial resources of Bank, taking into consideration Bank's record of operation in its home country, its overall financial resources, and its standing with its home country supervisor, financial and managerial factors are consistent

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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.

<sup>7</sup> 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 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).

<sup>8</sup> See 12 CFR 211.24(d)(2).

<sup>9</sup> See, e.g., *Banco Espírito Santo de Investimento, S.A.*, 95 *Federal Reserve Bulletin* B53 (2009); *Banco Santander Totta, S.A.*, 93 *Federal Reserve Bulletin* C71 (2007); and *Caixa Económica Montepio Geral*, 86 *Federal Reserve Bulletin* 700 (2000).

<sup>10</sup> See, e.g., *Bankia, S.A.* (order dated December 16, 2011), 98 *Federal Reserve Bulletin* 42 (4th Quar. 2011); *Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja, et al.* (order dated December 17, 2010), 97 *Federal Reserve Bulletin* 4 (4th Quar. 2010); and *Caja de Ahorros y Monte de Piedad de Madrid, et al.*, 95 *Federal Reserve Bulletin* B23 (2009).

with approval of the proposed representative offices. Bank appears to have the experience and capacity to support the proposed representative offices and has established controls and procedures for the proposed representative offices to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally.

Portugal is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Portugal has enacted laws and developed regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Portugal, and Portuguese financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Bank has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

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

Information relevant to the standard regarding risk to the stability of the United States financial system has been reviewed. In particular, consideration has been given to the absolute and relative size of Bank in its home country, the scope of Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability, and the framework in place for supervising 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 commitments made by Bank and La Caixa, Bank's application to establish the representative offices is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to the authority delegated by the Board.<sup>11</sup> Should any restrictions on access to information on the operations or activities of Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.<sup>12</sup> For purposes of this action, these commitments and conditions

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<sup>11</sup> 12 CFR 265.7(d)(12).

<sup>12</sup> The Board's authority to approve the establishment of the proposed representative offices parallels the continuing authority of the states of Massachusetts and New Jersey to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the states of Massachusetts and New Jersey or

are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective November 18, 2013.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Canara Bank Bangalore, India

### *Order Approving Establishment of a Branch FRB Order No. 2013-14 (December 13, 2013)*

Canara Bank (“Canara”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA<sup>1</sup> to establish a branch 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 in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation (*New York Daily News*, March 30, 2012). The time for filing comments has expired, and the Board has considered all comments received.

Canara, with total consolidated assets of approximately \$77 billion, is the sixth largest commercial bank in India.<sup>2</sup> The government of India owns approximately 67.7 percent of Canara. No other shareholder owns more than 5 percent of the shares of Canara.

Canara engages in a wide range of activities, including corporate and retail banking, trade finance, venture capital, investment banking, insurance, information system consulting, and asset finance. Outside India, Canara maintains branches or offices in the United Kingdom, the People’s Republic of China, United Arab Emirates, and the Kingdom of Bahrain. Canara has a joint venture in Moscow with State Bank of India, Mumbai, India, and also manages two exchange companies in the Middle East, which facilitate remittances of non-resident Indians in the region. The proposed branch would be Canara’s initial location in the United States.<sup>3</sup> Canara would be a qualifying foreign banking organization under Regulation K.<sup>4</sup>

The proposed New York branch would offer a range of banking products and services, including permissible deposit accounts, as well as small-business lending, remittance services, advisory services, and trade finance.<sup>5</sup>

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their agents, the Massachusetts Office of Consumer Affairs and Business Regulation and the New Jersey Division of Banking, to license the proposed offices of Bank in accordance with any terms or conditions that those agents may impose.

<sup>1</sup> 12 U.S.C. § 3105(d).

<sup>2</sup> Asset and ranking data are as of March 31, 2013.

<sup>3</sup> Upon establishment of the proposed branch, Canara’s home state under the IBA and Regulation K would be New York.

<sup>4</sup> 12 CFR 211.23(a).

<sup>5</sup> Deposits of the proposed branch would not be insured.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, 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.<sup>6</sup> The Board also considers additional standards as set forth in the IBA and Regulation K.<sup>7</sup>

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> This is the standard applied in this case.

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

With respect to supervision by home country authorities, the Board previously has determined, in connection with applications involving other banks in India, that those banks' home country authorities were working to establish arrangements for the consolidated supervision of the banks.<sup>12</sup> Canara is supervised by the Reserve Bank of India ("RBI") on substantially the same terms and conditions as those banks.

India participates in international forums that address the prevention of money laundering and terrorist financing. India is a member of the Financial Action Task Force ("FATF"). India is a party to the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the U.N. International Convention for the Suppression of the Financing of Terrorism.<sup>13</sup>

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<sup>6</sup> 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. In assessing this 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 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.

<sup>7</sup> 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2).

<sup>8</sup> 12 U.S.C. § 3105(d)(6).

<sup>9</sup> 12 U.S.C. § 3105(d)(6)(A).

<sup>10</sup> 12 U.S.C. § 3105(d)(6)(B).

<sup>11</sup> *Id.*

<sup>12</sup> ICICI Bank Limited, 94 *Federal Reserve Bulletin* C26 (2008) (Order dated October 19, 2007); State Bank of India, 94 *Federal Reserve Bulletin* C69 (2008) (Order dated January 25, 2008).

<sup>13</sup> India became a full member of the FATF in June of 2010.

Since becoming a member of FATF, India has submitted five follow-up reports detailing an action plan to further improve its regime for anti-money-laundering activities and to combat the financing of terrorism (“AML/CFT”), with the latest report presented at the June 2013 plenary session of FATF. In early 2013, India enacted legislation to address issues relating to money laundering and the financing of terrorism, and the implementation of effective confiscation and provisional measures. In addition, the RBI has issued “Know Your Customer (KYC) Guidelines – Anti-Money Laundering Standards” (“Guidelines”), which require financial institutions to establish systems for the prevention of money laundering. Indian banks were required to be fully compliant with the Guidelines by December 31, 2005. The RBI issued further guidelines in February 2006 providing clarification on reporting cash and suspicious transactions to India’s Financial Intelligence Unit.

Canara has policies and procedures to comply with Indian laws and regulations and the RBI’s Guidelines on the prevention of money laundering. Canara has also taken additional steps on its own initiative to combat money laundering and other illegal activities. Canara states that it is committed to implementing the relevant recommendations of the FATF and that it has put in place anti-money-laundering policies and procedures to ensure ongoing compliance with statutory and regulatory requirements, including designating branch-level and regional officers responsible for implementing Canara’s anti-money-laundering policies and procedures.<sup>14</sup> Canara’s compliance with anti-money-laundering requirements is monitored by the RBI and by Canara’s internal and external auditors.

Based on all the facts of record, the Board has determined that Canara’s home country authorities are actively working to establish arrangements for the consolidated supervision of Canara and that considerations relating to the steps taken by Canara and its home country to combat money laundering are consistent with approval under this exemption.

The Board has also taken into account the additional standards set forth in section 7 of the IBA and Regulation K.<sup>15</sup> The RBI has approved the establishment of the proposed branch.

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

With respect to access to information about Canara’s operations, the restrictions on disclosure in relevant jurisdictions in which Canara operates have been reviewed, and relevant government authorities have been contacted regarding access to information. Canara has committed to make available to the Board such information on its operations and those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act, and other applicable federal law. To the

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<sup>14</sup> Canara states that the AML/CFT policy documents to be utilized by the proposed branch will be consistent with the FATF financial institution specific recommendations.

<sup>15</sup> See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: (i) whether the bank’s home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vi) the needs of the community; and (vii) the bank’s record of operations.

extent that the provision of such information to the Board may be prohibited by law or otherwise, Canara has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, and subject to the condition described below, it has been determined that Canara has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection 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.<sup>16</sup> Information relevant to this standard has been reviewed. In particular, consideration has been given to the absolute and relative size of Canara in its home country; the scope of Canara'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 Canara 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 Canara as well as the terms and conditions set forth in this order, Canara's application to establish a branch in New York, New York, is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.<sup>17</sup> Should any restrictions on access to information on the operations or activities of Canara and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Canara or its affiliates with applicable federal statutes, the Board may require termination of any of Canara's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Canara with the commitments made in connection with this application and with the conditions in this order.<sup>18</sup> The commitments and conditions referred to above are deemed to be conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under 12 U.S.C. § 1818 against Canara and its affiliates.

By order, approved pursuant to authority delegated by the Board, effective December 13, 2013.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

<sup>16</sup> 12 U.S.C. § 3105(d)(3)(E).

<sup>17</sup> 12 CFR 265.7(d)(12).

<sup>18</sup> The authority to approve the establishment of the proposed branch parallels the continuing authority of the State of New York to license offices of a foreign bank. The approval of this application does not supplant the authority of the New York State Department of Financial Services ("Department") to license the proposed office of Canara in accordance with any terms or conditions that the Department may impose.

## RBC Investor Services Bank S.A. Esch-sur-Alzette, Luxembourg

### *Order Approving Establishment of a Representative Office FRB Order No. 2013–15 (December 17, 2013)*

RBC Investor Services Bank S.A. (“Investor Bank”), Esch-sur-Alzette, Luxembourg, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA<sup>1</sup> to establish a representative office in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Times*, December 4, 2012). The time for filing comments has expired, and all comments received have been considered.

Investor Bank, with total consolidated assets of approximately \$18.3 billion, is a global custodian bank organized under the laws of Luxembourg primarily serving funds located outside the United States.<sup>2</sup> Its banking activities are related to its overall custody-related activities. Investor Bank, with approximately \$1.0 trillion in assets under management, offers institutional investors worldwide an integrated array of products and services, including global custody, funds administration, securities lending, shareholder services, analytics, and other related investor services. Investor Bank accepts deposits that are incidental to facilitating liquidity for the trading, investing, and settlement activities of its clients. It has subsidiaries and branches in Ireland, France, Spain, Switzerland, Italy, Belgium, Singapore, and Hong Kong.

Investor Bank’s parent company, Royal Bank of Canada (“RBC” – consolidated assets of \$827 billion), Montreal, Canada, is Canada’s largest commercial bank,<sup>3</sup> providing personal and commercial banking, wealth management, insurance, investment banking, and transaction processing services on a global basis.<sup>4</sup> RBC owns 100 percent of Investor Bank through a wholly-owned holding company, Royal Bank Holdings Inc., Toronto, Canada (“RBH”). RBC’s custodial and funds management operations are conducted mainly through its Canadian subsidiary RBC Investor Services Trust, Investor Bank, and their affiliates and branches around the world.<sup>5</sup> The Luxembourg Commission de Surveillance du Secteur Financier (“CSSF”) is the supervisor of Investor Bank.

The proposed representative office would market Investor Bank’s products and services to customers in the United States and engage in certain liaison activities. The office would

<sup>1</sup> 12 U.S.C. § 3107(a).

<sup>2</sup> Asset data are as of June 30, 2013.

<sup>3</sup> Asset and ranking data are as of July 31, 2013.

<sup>4</sup> In the United States, RBC operates branches in New York City, Miami, and Portland (Oregon), agencies in Dallas and Houston, and representative offices in San Francisco, Houston, Wilmington (Delaware), and Seattle. In March 2012, RBC sold its retail banking operations in the United States to PNC Financial Services Group, Inc., but retained a bank subsidiary, RBC Bank Georgia, N.A., Atlanta, Georgia, which primarily maintains a securities portfolio comprised of mortgage-backed, asset-backed, and other debt securities. In addition, the bank has several nonbanking subsidiaries in the United States engaged in asset management and capital market activities.

<sup>5</sup> RBC Investor Services Trust provides services to clients only in Canada, while services provided to the rest of the world are conducted through Investor Bank. RBC Investor Services Trust is the largest custodian and fund administrator in Canada, and is supervised by Canada’s Office of the Superintendent of Financial Institutions (“OSFI”).

provide information concerning the bank's products and services, such as custody, fund administration, and transfer agency services, to U.S. fund managers who have or are seeking to establish offshore investment funds, primarily in Ireland and Luxembourg. Specific activities of the representative office would include identifying new business opportunities, responding to requests for proposals, and making presentations regarding available products and services to existing and prospective clients. The proposed representative office would also engage in other activities permissible for a representative office.<sup>6</sup>

In acting on an application under the IBA and Regulation K by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.<sup>7</sup> The Board also takes into account additional standards set forth in the IBA and Regulation K.<sup>8</sup> The Board will consider that the supervision standard has been met if it determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities. This is a lesser standard than the comprehensive, consolidated supervision standard applicable to proposals to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities.<sup>9</sup> This application has been considered under the lesser standard.

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

With respect to supervision by home country authorities, the Board has considered that Investor Bank is supervised by the CSSF. In connection with an application from another

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<sup>6</sup> 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).

<sup>7</sup> 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In applying 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.

<sup>8</sup> 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 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).

<sup>9</sup> See 12 CFR 211.24(d)(2).

Luxembourg banking organization, Cedel Bank, S.A., to establish a representative office in the United States, the Board previously has determined that Cedel Bank was subject to a supervisory framework by the predecessor to the CSSF, the Institut Monétaire Luxembourgeois, consistent with the limited representative office standard.<sup>10</sup> Since that determination, the supervision of banks in Luxembourg by the CSSF has progressed in line with other countries in the European Union. Based on all the facts of record, including the supervisory regime applicable to Investor Bank and the fact that Investor Bank is seeking to establish a representative office, it has been determined that Investor Bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

RBC's home country supervisor is the OSFI. With respect to supervision of RBC, the Board previously has determined in connection with applications to establish U.S. operations that several Canadian banking organizations supervised by the OSFI, including RBC, are subject to comprehensive supervision on a consolidated basis.<sup>11</sup> Since the last Board determination, the OSFI has enhanced its supervisory framework by improving requirements in the areas of liquidity, risk management, stress testing, funding diversification, and corporate governance. Based on all the facts of record, the Board has concluded that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The additional standards set forth in section 7 of the IBA and Regulation K also have been taken into account.<sup>12</sup> The CSSF and the OSFI have no objection to the establishment of the proposed representative office.

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

Luxembourg is a member of the Financial Action Task Force ("FATF") and subscribes to the FATF's recommendations regarding measures to combat money laundering and international terrorism. In accordance with these recommendations, Luxembourg 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 Luxembourg, 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. Investor Bank has policies and procedures in place to comply with these laws and regulations, and these policies and procedures are monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information about Investor Bank's operations, the restrictions on disclosure in relevant jurisdictions in which Investor Bank operates have been reviewed, and relevant governmental authorities have been communicated with regarding access to such information. Investor Bank has committed to make available to the Board such infor-

<sup>10</sup> See *Cedel Bank, S.A.*, 82 *Federal Reserve Bulletin* 591 (1996).

<sup>11</sup> See *Bank of Montreal*, 97 *Federal Reserve Bulletin* 24 (2011); *Royal Bank of Canada*, 94 *Federal Reserve Bulletin* C45 (2008).

<sup>12</sup> See *supra* note 5.

mation on the operations of Investor Bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, as amended, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, Investor Bank has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for the disclosure of such information. In addition, subject to certain conditions, the CSSF may share information on Investor 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 Investor Bank has provided adequate assurances of access to any necessary information that the Board may request.

Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of Investor Bank in its home country, the scope of Investor Bank's activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability, and the framework in place for supervising Investor Bank in its home country. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

Based on the foregoing and all the facts of record, Investor Bank's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.<sup>13</sup> Should any restrictions on access to information on the operations or activities of Investor Bank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Investor Bank or its affiliates with applicable federal statutes, the Board may require termination of any of Investor Bank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Investor Bank with the conditions imposed in this order and the commitments made to the Board in connection with this application.<sup>14</sup> 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 December 17, 2013.

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

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<sup>13</sup> 12 CFR 265.7(d)(12).

<sup>14</sup> The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York Department of Financial Services, to license the proposed office of Investor Bank in accordance with any terms or conditions that it may impose.