



Legal Developments: First Quarter, 2014

Order Issued Under Bank Holding Company Act

Order Issued Under Section 3 of the Bank Holding Company Act

Community & Southern Holdings, Inc.
Atlanta, Georgia

Order Approving the Acquisition of a Bank Holding Company
FRB Order No. 2014-5 (March 31, 2014)

Community & Southern Holdings, Inc. (“CSH”), Atlanta, Georgia, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Verity Capital Group, Inc. (“Verity”) and thereby indirectly acquire its subsidiary bank, Verity Bank (“Verity Bank”), both of Winder, Georgia. Following the proposed acquisition, Verity Bank would be merged into CSH’s subsidiary bank, Community & Southern Bank (“C&S Bank”), Atlanta, a state nonmember bank.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 61352 (October 3, 2013)).³ 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.

CSH, with consolidated assets of approximately \$2.8 billion, is the 265th largest insured depository organization in the United States, controlling approximately \$2.2 billion in consolidated deposits.⁴ C&S Bank, which operates only in Georgia, is the 11th largest depository institution in Georgia, controlling deposits of approximately \$2.0 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

Verity, with consolidated assets of approximately \$162 million, controls Verity Bank, which operates only in Georgia. Verity Bank is the 119th largest insured depository institution in Georgia, controlling deposits of approximately \$145 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, CSH would become the 248th largest depository organization in the United States, with consolidated assets of approximately \$3.0 billion, which

¹ 12 U.S.C. § 1842.

² The merger of Verity Bank into C&S Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) under the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

³ 12 CFR 262.3(b).

⁴ Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

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

represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. CSH would control consolidated deposits of approximately \$2.4 billion. CSH would remain the 11th largest depository organization in Georgia, controlling deposits of approximately \$2.1 billion, which represent approximately 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of 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.⁶

CSH and Verity compete directly in the Atlanta Area, Georgia banking market.⁷ 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 CSH and Verity⁸; 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”)⁹; 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 moderately concentrated, as measured by the HHI, and numerous competitors would remain.¹⁰

⁶ 12 U.S.C. § 1842(c)(1).

⁷ The Atlanta Area, Georgia banking market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, and Walton counties; and the towns of Auburn and Winder in Barrow County and Luthersville in Meriwether County, excluding the town of Clermont in Hall County, all in Georgia.

⁸ 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), 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).

⁹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010 (*see* Press Release, Department of Justice (Aug. 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

¹⁰ CSH operates the 15th largest depository institution in the Atlanta Area, Georgia banking market with approximately \$1 billion in deposits, which represent less than 1 percent of market deposits. Verity operates the 53rd largest depository institution in the same market, controlling deposits of approximately \$122 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, CSH would operate the 13th largest depository institution in the market, controlling weighted deposits of approximately \$1.1 billion, which represent less than 1 percent of market deposits. The HHI would remain unchanged at 1517 and 97 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.¹¹

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 CSH and Verity compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

Section 3(c) of the BHC Act requires the Board to consider 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, as well as the effectiveness of the company in combatting money laundering.

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. CSH and C&S Bank are well capitalized and would remain so on consummation of the proposed acquisition, which is a bank holding company merger, structured as a cash transaction.¹² CSH is in satisfactory financial condition, and the asset quality, earnings, and liquidity of C&S Bank and Verity Bank are consistent with approval. Based on its review of the record, the Board finds that CSH 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 CSH, Verity, and their subsidiary depository institutions, including assessments of their management teams, 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

¹¹ A commenter asserted that the proposed transaction should not be permitted under Georgia law because Verity Bank is a de novo bank, established on October 27, 2008. However, under Georgia law, a registered Georgia bank holding company is permitted to directly or indirectly acquire ownership of any bank provided that the bank has been in existence, and continually operating or incorporated as a bank, for a period of three years or more prior to the date of acquisition. *See* GA. CODE § 7-1-608 (2013). Because Verity Bank has been in existence for longer than three years, the proposal would not be in violation of Georgia law. In that regard, the Georgia Department of Banking and Finance approved the proposal on January 8, 2014. Letter from Murali Ramachandran, Corporate Manager, Financial Institutions, Georgia Department of Banking and Finance, to Patrick M. Frawley, Chief Executive Officer, Community & Southern Holdings, Inc. (Jan. 8, 2014).

¹² All Verity common stock will be acquired for cash consideration. The Board has confirmed that CSH has the resources to fund the transaction.

anti-money laundering laws.

CSH, Verity, and their subsidiary depository institutions are each considered to be well managed. CSH's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of CSH have substantial knowledge of, and experience in, the banking and financial services sectors.¹³

The Board also has considered CSH's plans for implementing the proposal. CSH is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. CSH would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. CSH's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner.¹⁴

CSH's supervisory record, managerial and operational resources, and plans for operating the combined institution 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 CSH's money laundering policies are consistent with approval.

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").¹⁵ 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,¹⁶ 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.¹⁷

The Board has considered all the facts of record, including reports of examination of the CRA performance of C&S Bank and Verity Bank, data reported by C&S Bank and Verity Bank under the Home Mortgage Disclosure Act ("HMDA"),¹⁸ C&S Bank's small business lending data, other information provided by CSH, confidential supervisory information,

¹³ CSH's board of directors and senior management team would remain the same after consummating the acquisition.

¹⁴ A commenter alleged that C&S Bank has improperly handled foreclosures on assets previously acquired from the FDIC through the failed bank resolution process. These assets are subject to loss sharing agreements with the FDIC. CSH represents that C&S Bank is required to explore loan modification and other loan workout alternatives before initiating the foreclosure process on assets subject to the loss sharing agreements. C&S Bank has established a "Resolution Management Group" in which dedicated workout officers work with borrowers to explore available resolution strategies for troubled assets. C&S Bank is subject to oversight and monitoring by the FDIC in connection with its compliance with the loss sharing agreements. The Board has consulted with the FDIC, the bank's primary federal regulator, which expressed no concerns with C&S Bank's compliance with the loss sharing agreements regarding foreclosures.

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

¹⁶ 12 U.S.C. § 2901(b).

¹⁷ 12 U.S.C. § 2903.

¹⁸ 12 U.S.C. § 2801 *et seq.*

and the public comments received on the proposal. The commenter objected to the proposal by generally alleging that C&S Bank has failed to adequately lend within its assessment areas, and generally questioning the public benefits of the proposal.

1. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.¹⁹ The CRA requires that the appropriate federal supervisory agency 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.²⁰ An institution's most recent CRA performance evaluation is a particularly important consideration in the application process because it represents a detailed, onsite evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of C&S Bank. C&S Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of January 28, 2011 ("C&S Bank Evaluation").²¹ Examiners considered C&S Bank to have a reasonable record of lending inside of its assessment areas and a reasonable record in small business lending.²²

As described in the C&S Bank Evaluation, FDIC examiners found that the bank had a good record of serving its assessment areas' credit needs.²³ The bank had a reasonable record of lending to businesses of different sizes, especially smaller-sized businesses, and a reasonable record of residential lending to borrowers of different incomes. Examiners noted that, considering the differences among the bank's markets and their respective demographics, C&S Bank had adequately penetrated LMI geographies throughout its assessment areas. Examiners also noted that the bank's penetration among low-income borrowers was good with regard to both the percentage of originations and the percentage of total dollar volume.

CRA Performance of Verity Bank. Verity Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 26, 2009 ("Verity Bank Evaluation").²⁴ Examiners concluded that Verity Bank's lending performance repre-

¹⁹ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

²⁰ 12 U.S.C. § 2906.

²¹ The C&S Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. Examiners focused on the bank's small business and residential lending record from the time C&S Bank began operations on January 29, 2010, through January 28, 2011. CSH provided a copy of the public evaluation portion of the C&S Bank Evaluation to the commenter at the commenter's request. Prior to receiving the public evaluation portion, the commenter erroneously alleged that the FDIC had failed to perform a CRA examination of C&S Bank.

²² The C&S Bank Evaluation reviewed data available to the FDIC as of the date of the evaluation concerning residential mortgage and small business loans originated or purchased within the relevant assessment areas. The C&S Bank Evaluation included a full-scope review of the Atlanta-Sandy Springs-Marietta, Georgia MSA assessment area (the "Atlanta MSA Assessment Area") and Fannin, Gilmer, Union, and Lumpkin counties in Georgia (the "Non-MSA Assessment Area"). Limited-scope reviews were performed in the Athens-Clarke County MSA, Gainesville MSA, and Dalton MSA assessment areas, all in Georgia. Examiners placed greater weight on the bank's performance in the Atlanta MSA Assessment Area than in the other assessment areas due to the bank's significant concentration of loan originations and loan purchases in that MSA; 95 percent of the bank's loans and loan purchases were made in that market.

²³ Small business and residential mortgage lending were the bank's primary lending focus.

²⁴ The Verity Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. Examiners reviewed Verity Bank's small business and construction and land development lending activity from October 27, 2008, to September 30, 2009. These products were selected for analysis because they represented approximately 70 percent of the bank's loan portfolio.

sents reasonable responsiveness to community credit needs. Examiners also noted that Verity Bank showed excellent penetration in its construction and land development lending, and in its small business lending in moderate-income census tracts in its assessment areas.²⁵

C&S Bank's Efforts Since the 2011 CRA Evaluation. CSH has provided information on the record of performance of C&S Bank since the C&S Bank Evaluation. CSH represents that in 2013, C&S Bank extended six community development loans in its assessment areas totaling \$23.5 million, which funded affordable housing facilities, a church and service center, and a regional food bank. In addition, C&S Bank has funded, or committed to fund, \$11.1 million in qualified investments in affordable housing projects in the bank's assessment areas, and has purchased \$1.1 million of mortgage-backed securities guaranteed by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to LMI borrowers within its assessment areas. CSH also noted that the bank has provided several community development donations and sponsorships to organizations serving primarily women-owned microbusinesses and LMI entrepreneurs, as well as youth financial literacy programs.²⁶

2. Fair Lending Record and Public Comments on the Application

The Board has considered C&S Bank's record in complying with fair lending and other consumer protection laws. In addition to reviewing the C&S Bank Evaluation and C&S 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 C&S Bank's fair lending policies and procedures. This also includes consideration of other agencies' views on C&S Bank's record of performance under fair lending laws, other confidential supervisory information, and the public comments on the proposal.

C&S Bank's Fair Lending Program. C&S Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. C&S Bank maintains a Fair Lending Compliance Program, which is part of its Consumer Compliance Program, which, in turn, is a component of the bank's overall Risk Management Program. The two primary components of C&S Bank's fair lending monitoring program are ongoing monitoring and periodic testing. The bank has created a "Director of Enterprise Risk Management" position to provide direct oversight over C&S Bank's Consumer Compliance Unit, which also includes a consumer compliance manager with oversight of four compliance officers. Each compliance officer has responsibility for overseeing specific bank functions, including lending, CRA, and fair lending compliance, as well as internal compliance monitoring. The bank maintains a policy of secondary reviews for all denials of consumer, mortgage, and commercial loans, and the Consumer Compliance Unit reviews all advertisements, website content, signage, and customer communications to ensure compliance with fair lending and other consumer protection laws and regu-

The commenter objected to the proposal on the basis that the FDIC had failed to perform a timely CRA examination of Verity Bank. However, the FDIC's examination of Verity Bank was performed in accordance with the timeframe provided in the FDIC compliance manual for examinations. The manual requires the FDIC to perform a CRA evaluation for newly chartered and insured institutions after the institution has been in operation from 0-12 months, and then again between 48-60 months. See FDIC Compliance Manual, Compliance Examinations – Examination and Visitation Frequency (December 2013). The FDIC opened a new consumer compliance and CRA examination of Verity Bank in December 2013. The Board has conferred with the FDIC regarding the examination.

²⁵ The Verity Bank Evaluation included a full-scope review of the Atlanta MSA Assessment Area and the Non-MSA Assessment Area.

²⁶ These loans, investments, and donations have not yet been evaluated by the FDIC, and the CRA does not require any specific level or type of lending, investment, or service. The next CRA examination for C&S Bank is scheduled for the second quarter of 2014. The bank will be evaluated under the Large Bank CRA Examination Procedures.

lations. Regular reports are provided to C&S Bank's Audit Committee and board of directors, which review and discuss various compliance matters, including development of new policies and procedures, special projects, results of monitoring programs, customer complaints, training, and regulatory examination status. C&S Bank's risk-management systems, and its policies and procedures for assuring compliance with fair lending laws, would be implemented at the combined organization.

Public Comment on the Application and Analysis of HMDA and CRA Data. Although the commenter did not allege specific discriminatory lending practices or cite to HMDA data disparities in lending to minorities, the commenter generally asserted that C&S Bank failed to adequately lend within its assessment areas, particularly to LMI borrowers.²⁷ In response to the comments, the Board analyzed C&S Bank's HMDA and CRA data. The Board's analysis included a review of C&S Bank's 2011 and 2012 HMDA data in its combined assessment areas, in the Atlanta MSA Assessment Area, in Verity Bank's assessment area, and in Barrow County.²⁸ The Board also consulted with the FDIC and considered examination reports of onsite evaluations by the FDIC regarding C&S Bank's compliance with fair lending laws and regulations.

C&S Bank extended approximately 80 percent of its mortgage-related loans within its combined assessment area in 2011 and 2012, and its HMDA application and origination volume nearly doubled between 2011 and 2012. Similarly, an analysis of CRA small business lending data indicates that the bank originated a greater percentage of its total loans and of its loans, to businesses with gross annual revenues of \$1 million or less, in LMI tracts than the aggregate of all lenders.

C&S Bank received a greater percentage of applications from, and extended a greater percentage of its loans to, Hispanic individuals in all markets under review compared to the aggregate, except Barrow County, where the bank received no applications from Hispanic individuals. However, there are no minority census tracts in Barrow County.²⁹ Although C&S Bank made significant progress in increasing the number of mortgage applications from African Americans and from predominantly minority census tracts from 2012 to 2013, the Board notes that the bank continues to lag the aggregate in both respects.³⁰ The data do not suggest that C&S Bank is systematically excluding African American or predominantly minority geographies. The Board encourages C&S Bank to continue its progress by seeking opportunities to increase its outreach in these communities.

The Board also reviewed C&S Bank's CRA small business and small farm lending data for 2012 and from January 1, 2013, to September 30, 2013, in its combined assessment areas, in the Atlanta MSA Assessment Area, in Verity Bank's assessment area, and in Barrow County, Georgia.³¹ C&S Bank extended more than 30 percent of its small business loans and loans to businesses with gross annual revenues of \$1 million or less in LMI census tracts, in both cases exceeding the aggregate's percentage of such loans in 2012, often sig-

²⁷ The commenter also alleged that C&S Bank failed to comply with HMDA data reporting requirements. The FDIC previously reviewed C&S Bank's 2011 HMDA data, and CSH represents that C&S Bank has filed all HMDA and CRA data as required by law. The Board consulted with the FDIC, which did not express any concerns in this regard.

²⁸ HMDA data do not provide a basis for an independent assessment of an applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral are not available from HMDA data.

²⁹ For Barrow County, the aggregate reported a small percentage (approximately 3 percent) of mortgage applications from and originations to Hispanic individuals.

³⁰ CSH provided C&S Bank's 2013 HMDA data to the Board, which is preliminary and has not been verified.

³¹ C&S Bank was not required to report small business or small farm lending data for 2011. The bank makes few small farm loans, and the Board does not consider them to be a major product of the bank.

nificantly. Moreover, C&S Bank extended almost 60 percent of its small business loans to businesses with gross annual revenues of \$1 million or less in its combined assessment areas and the Atlanta MSA Assessment Area. The data do not suggest that C&S Bank is failing to lend to small businesses.

The Board notes that C&S Bank's percentage of loan applications and originations for properties located in LMI census tracts, and involving LMI individuals, as well as of its small business loans and loans to businesses with gross annual revenues of \$1 million or less in LMI census tracts, has generally met or exceeded the aggregate.

3. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. CSH stated that it would provide expanded retail and commercial banking products and services to Verity Bank's customers, including a broader range of deposit and loan products, enhanced online and mobile banking, and a higher lending limit to its customers. The capital and human resources of the combined entity would enable it to be a stronger competitor in Verity Bank's assessment areas than is presently the case. The merger also would benefit current customers of Verity Bank through access to significantly larger branch and ATM networks. The branch network available to current Verity Bank customers would increase from 2 to 41 branch locations throughout Georgia.

The commenter alleged that the proposal would not provide a clear or significant public benefit and asserted that C&S Bank plans to close both existing Verity Bank branches, which would result in a loss of jobs in the community.³² Contrary to the commenter's assertion, CSH represents that it plans to continue operating both Verity Bank branches following completion of the bank merger. Any future branch closings or consolidations would be completed in accordance with C&S Bank's branch closing policy, which includes procedures for mitigating any potential negative impacts on the community which may result from the branch's closure. The Board consulted with the FDIC, which did not express any concerns regarding the bank's branch closing policy.

In order to ensure that CSH continues to meet its obligations under the CRA and fair lending laws, CSH has committed that, within thirty (30) days following consummation of the merger with Verity, CSH will develop and adopt a statement of goals and objectives, consistent with CSH's strategic business plan and the combined organization's size and complexity, to continue meeting the credit needs of the communities that the combined organization serves, including low- and moderate-income neighborhoods and small businesses.

³² The commenter also asserted that the FDIC loss sharing agreements to which C&S Bank is subject create "negative lending incentives" that encourage C&S Bank to foreclose on assets acquired from the FDIC rather than extend new credit. The commenter further asserted that Verity Bank is the only remaining community bank in the local market not subject to an FDIC loss sharing agreement, the loss of which would reduce the overall availability of credit to LMI borrowers. Finally, the commenter asserted that CSH's profits would not be reinvested in its assessment areas because it is a Delaware corporation with top-tier investors that are located outside of Georgia. The Board notes that the current proposal does not involve a loss sharing agreement with the FDIC. Additionally, C&S Bank has a business model that encourages extending new credit and the record does not suggest that the proposal would reduce the overall availability of credit to LMI borrowers. The Board also notes that C&S Bank is subject to the provisions of the CRA, which require a bank to meet the credit needs of the communities in which it operates, without regard to the location of the holding company's registration, investors, or board members.

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 CSH, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage and small business lending operations and compliance programs of C&S Bank and Verity Bank, review of examination reports, and consultation with the FDIC, 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.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("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."³³

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.³⁴ 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.³⁵

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, CSH would have approximately \$3.0 billion in consolidated assets, and by any of a number of alternative measures of firm size, CSH 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, CSH's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in

³³ 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).

³⁴ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³⁵ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

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.³⁶ 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 CSH 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 March 31, 2014.

Voting for this action: Chair Yellen, and Governors Tarullo, Stein, and Powell.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under International Banking Act

Banque Centrale Populaire
Casablanca, Morocco

*Order Approving Establishment of a Representative Office
FRB Order No. 2014-4 (March 28, 2014)*

Banque Centrale Populaire ("BCP"), Casablanca, Morocco, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 10(a) of the

³⁶ The commenter 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 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, the commenter submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comments do not present the commenter's views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

IBA¹ to establish a representative office in Washington, D.C. 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 Washington, D.C. (*Washington Post*, October 12, 2012). The time for filing comments has expired, and all comments received have been considered.

Ten regional Moroccan banks, the Banque Populaires Regionales (“BPRs”), each own between approximately 2.8 and 4.9 percent of BCP’s voting shares and together control 45.7 percent. Approximately 17.5 percent of the voting shares of BCP is owned, directly and indirectly, by the government of Morocco.² Additionally, the International Finance Corporation, an international financial institution, owns 5 percent of BCP’s shares. No other shareholder owns 5 percent or more of BCP’s shares.

BCP (assets of \$21.1 billion)³ engages in retail and commercial banking; corporate, project and trade finance; investment banking; correspondent banking; and foreign exchange activities. Outside Morocco, BCP’s subsidiary Chaabi Bank, Paris, France, has 35 branches and offices across Europe. BCP also owns subsidiary banks in Western Africa and holds a 50 percent interest in Atlantic Bank International, Abidjan, Ivory Coast, which has banking operations in seven African countries. BCP has representative offices in six jurisdictions. BCP has no operations in the United States.

BCP is part of an association of banks originally chartered in 1926 under Moroccan law. That association, Crédit Populaire du Maroc (“CPM”), Casablanca, Morocco, includes BCP and the 10 BPRs.⁴ CPM was formed to create a nationwide banking network of BCP and the BPRs. Each of BCP and the BPRs provides services to customers in a specific geographic region of Morocco, with BCP serving the Casablanca region. BCP serves as the central banking body for the BPRs.

As noted above, BCP and the BPRs operate as a nationwide banking network.⁵ The proposed representative office would act as a liaison between BCP and the BPRs and their respective customers. The proposed representative office would also conduct research, solicit banking business for BCP and the BPRs, perform back-office and administrative

¹ 12 U.S.C. § 3107(a).

² The government of Morocco holds approximately 6 percent of BCP’s shares. Approximately 5.1 percent of BCP’s shares are held by Group Office Cherifien des Phosphates, a Moroccan phosphate mining and export company, 94 percent of the shares of which are held by the government of Morocco. Approximately 6.4 percent of BCP’s shares are owned by the state-run pension fund.

³ Data are as of December 31, 2013. BCP is part of Groupe Banque Populaire (“GBP”), which also includes BCP’s banking and specialized subsidiaries, the 10 BPRs, and BCP’s foundations of public utility. The GBP entities together have assets of \$35.1 million and are the second largest financial organization in Morocco.

⁴ The BPRs are independent banks operating as banking cooperatives that are owned by their customers.

⁵ CPM is not an incorporated organization. However, the IBA defines a “foreign bank” as “any company organized under the laws of a foreign country, . . . which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of such company.” 12 U.S.C. § 3101(7). The IBA defines “company” to have the same meaning as in the Bank Holding Company Act of 1956, as amended (“BHC Act”). 12 U.S.C. § 3101(13). Section 2(b) of the BHC Act defines a company to include, among other things, any “association or similar organization.” 12 U.S.C. § 1841(b). In other contexts, the Board has regarded a group of entities that are bound together in a formalized structure to constitute a “company.” Because of the legally mandated structure of the CPM, the Board is treating it as a single banking entity for the purposes of providing representative functions.

functions, provide information about products and services to customers, and perform preliminary steps in connection with lending, such as assembling credit information.⁶

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside 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.⁷ The Board also considers additional standards set forth in the IBA and Regulation K.⁸

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.⁹ This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

In connection with this application, BCP has provided certain commitments that limit the activities of the proposed representative office. It has committed to engage only in activities permissible for a representative office under Regulation K. In particular, BCP has committed that the proposed representative office would not make credit decisions nor any other decisions that would bind BCP, or engage in activities related to securities trading, foreign exchange, or money transmission. The representative office would engage only in the activi-

⁶ 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).

⁷ 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 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.

⁸ 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).

⁹ See 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that "[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers than do branches or agencies." 66 *Fed. Reg.* 54365 (October 26, 2001).

ties indicated in its application to the Board and would not be staffed by more than five employees.

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

In evaluating whether the scope of supervision of BCP by home country authorities meets the standards required for opening a representative office, a number of factors have been taken into consideration. The Moroccan central bank, Banque Al-Maghrib (“BAM”), supervises banks and finance companies, including BCP and its subsidiaries. BAM supervises and regulates BCP, the BPRs, CPM, and the GBP through a combination of regular on-site examinations and off-site monitoring. On-site examinations cover the major areas of operation, capital adequacy, risk management, asset quality, and internal controls. Off-site monitoring is conducted through the review of required periodic reports, which are submitted daily, monthly, biannually, and annually. BCP, BCP’s subsidiaries, the BPRs, CPM, and the GBP each submit periodic reports to BAM, including accounting, prudential, and financial reports. The General Inspectorate of CPM, which is charged with its internal audit function, submits to BAM annual reports on internal controls, risk management, compliance, business continuity, and foreign branch activity.

BAM sets the scope for annual audits of BCP, the BPRs, and the GBP and requires that the audits be performed by external auditors. The external auditors annually submit a report to BAM on the internal control systems of BCP, the BPRs, and the GBP.

Based on all the facts of record, including the commitments provided by BCP limiting the activities of the proposed office, it has been determined that BCP 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.

BCP 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. Taking into consideration BCP’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 with approval of the proposed representative office.

Morocco is not a member of the Financial Action Task Force (“FATF”). Morocco is a member of the Middle East and North Africa Financial Action Task Force, one of several associate members of FATF, and subscribes to its recommendations on measures to combat money laundering. In accordance with these recommendations, Morocco has enacted laws and developed regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Morocco, and Moroccan financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. BCP has policies and procedures to comply with these laws and regulations that are monitored by governmental entities responsible for anti-money-laundering compliance.

BCP has committed to make available to the Board such information on BCP’s operations and on any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, BCP has committed to cooperate with the Board to obtain any necessary consents or waivers that

might be required from third parties for disclosure of such information. In addition, subject to certain conditions, BAM may share information on BCP'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 BCP has provided adequate assurances of access to any necessary information that the Board may request.

The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of BCP in its home country; the scope of BCP'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 BCP in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to commitments made by BCP, BCP's application to establish the representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹⁰ Should any restrictions on access to information on the operations or activities of BCP and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by BCP or its affiliates with applicable federal statutes, the Board may require termination of any of BCP's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by BCP with the conditions imposed in this order and the commitments made to the Board in connection with this application.¹¹ For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective March 28, 2014.

Robert deV. Frierson
Secretary of the Board

Wing Lung Bank Limited
Hong Kong SAR, People's Republic of China

*Order Approving Establishment of Branches
FRB Order No. 2014-1 (January 13, 2014)*

Wing Lung Bank Limited ("Wing Lung"), Hong Kong SAR ("Hong Kong"), People's Republic of China, a foreign bank within the meaning of the International Banking Act ("IBA"), has applied under section 7(d) of the IBA¹ to establish a federal branch in San Francisco, California, and to upgrade its existing limited federal branch in Alhambra, Cali-

¹⁰ 12 CFR 265.7(d)(12).

¹¹ The Board's authority to approve the establishment of the proposed representative office parallels the continuing authority of the District of Columbia to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the District of Columbia or its agent, the District of Columbia Department of Insurance, Securities and Banking, to license the proposed office of BCP in accordance with any terms or conditions that they may impose.

¹ 12 U.S.C. § 3105(d).

ifornia, to a full-service branch.² 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.³

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in both San Francisco (*The Recorder*, August 27, 2012) and Alhambra (*San Gabriel Valley Tribune*, August 23, 2012). The time for filing comments has expired, and the Board has considered all comments received.

Wing Lung, with total consolidated assets of approximately \$27.2 billion, is the 10 largest bank in Hong Kong.⁴ China Merchants Bank Co., Limited (“CMB”), Shenzhen, People’s Republic of China, owns all of the shares of Wing Lung.⁵

Wing Lung is a commercial bank and engages in retail and commercial banking. Outside Hong Kong, Wing Lung operates branches in Shenzhen and Shanghai, People’s Republic of China, and a branch in the Cayman Islands. In the United States, Wing Lung operates a limited federal branch in Alhambra, California, as noted. Wing Lung is a qualifying foreign banking organization under Regulation K.⁶

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether: (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States; (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately; and (3) the foreign bank and any foreign bank parent are subject to compre-

² As a limited branch, the Alhambra branch is prohibited from accepting deposits from sources other than those permitted by section 25A of the Federal Reserve Act. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and only such deposits within the United States that are incidental to or for the purpose of carrying out transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of Edge corporations. 12 CFR 211.6(a)(1). Upgrading the limited branch to a full-service branch would permit the branch to accept wholesale domestic deposits.

³ Under the Board’s Regulation K, upgrading a limited branch to a full-service branch requires Board approval. 12 CFR 211.21(l)(4) and (f).

⁴ Asset and ranking data are as of June 30, 2013, and are based on the exchange rate as of that date.

⁵ CMB, with total consolidated assets of approximately \$620 billion, is the seventh largest bank in China. CMB is indirectly controlled by the government of China through a number of wholly-owned companies. One of these companies, China Merchants Group, Limited, Shenzhen, People’s Republic of China, indirectly owns approximately 18.6 percent of CMB’s total outstanding shares and is considered to control CMB for purposes of the Bank Holding Company Act. *China Merchants Bank Co., Limited*, 94 *Federal Reserve Bulletin* C24 (2008) (“CMB Order”), at n. 3. Another government-owned company, China Ocean Shipping (Group) Company, owns 6.2 percent of the shares of CMB. HKSCC Nominees Limited holds approximately 17.9 percent of the shares of CMB as the registered nominee of other shareholders. No other shareholder owns more than 5 percent of the shares of CMB. Shareholder data are as of June 30, 2013.

⁶ 12 CFR 211.23(a).

hensive supervision on a consolidated basis by their home country supervisor.⁷ The Board also considers additional standards as set forth in the IBA and Regulation K.⁸

The IBA includes a limited exception to the general standard relating to comprehensive, consolidated supervision.⁹ 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.¹⁰ As discussed below, this is the standard applied by the Board in this case. In deciding whether to exercise its discretion to approve an application under authority of this exception, the Board must also consider whether the foreign bank has adopted and implemented procedures to combat money laundering.¹¹ 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.¹²

As noted above, Wing Lung engages directly in the business of banking outside the United States. CMB also engages directly in the business of banking outside the United States. Wing Lung 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 Hong Kong, that those banks were subject to comprehensive supervision on a consolidated basis by their home

⁷ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, 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.

⁸ 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (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 has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank's record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, 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).

⁹ 12 U.S.C. § 3105(d)(6).

¹⁰ 12 U.S.C. § 3105(d)(6)(A).

¹¹ 12 U.S.C. § 3105(d)(6)(B).

¹² *Id.*

jurisdiction supervisor, the Hong Kong Monetary Authority (“HKMA”).¹³ Wing Lung is supervised by the HKMA on substantially the same terms and conditions as those other banks. In this case, however, Wing Lung is part of a large financial group headquartered outside of Hong Kong. As described above, Wing Lung is wholly owned by CMB, which is in turn controlled by China Merchants Group, Limited. In 2007, the Board approved an application by CMB to operate a branch in New York. In acting on that application, the Board determined that CMB’s home country supervisor was actively working to establish arrangements for the consolidated supervision of CMB, consistent with the discretionary standard in the IBA. Consequently, the Board has determined to apply the same standard in acting on this application by CMB’s subsidiary bank.

Hong Kong is a member of the Financial Action Task Force (“FATF”) and subscribes to the FATF’s recommendations on measures to combat money laundering and terrorist financing. In accordance with these recommendations, Hong Kong has enacted laws and developed regulatory standards to deter money laundering and terrorist financing. Money laundering is a criminal offense in Hong Kong, and Hong Kong financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering and terrorist financing throughout their worldwide operations. Wing Lung 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. Based on all the facts of record, it has been determined that Wing Lung’s home jurisdiction supervisor is actively working, in conjunction with the relevant supervisory authorities of the People’s Republic of China, to establish arrangements for the consolidated supervision of Wing Lung, and that considerations relating to the steps taken by Wing Lung and its home jurisdiction to combat money laundering are consistent with approval under this standard.

The Board previously has determined that CMB’s home country supervisor is actively working to establish arrangements for the consolidated supervision of CMB and that considerations relating to the steps taken by CMB and its home jurisdiction to combat money laundering are consistent with approval under this standard.¹⁴ Based on this finding and all the facts of record, the Board has concluded that CMB’s home country supervisory authority remains actively working to establish arrangements for the consolidated supervision of CMB and that considerations relating to the steps taken by CMB and its home country to combat money laundering are consistent with approval under this standard.

The additional standards set forth in section 7 of the IBA and Regulation K have also been taken into account. The HKMA has no objection to the establishment of the proposed branches.

The Board has also considered the financial and managerial factors in this case. Hong Kong’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Accord”). Wing Lung’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 Wing Lung are considered consistent with approval, and Wing Lung appears to have the experience and capacity to support the proposed branches. In addition, Wing Lung has established

¹³ See letter, dated May 14, 2007, from the Federal Reserve Bank of New York to The Hongkong and Shanghai Banking Corporation Limited; *Citic Ka Wah Bank Limited*, 89 *Federal Reserve Bulletin* 435 (2003); *The Bank of East Asia, Limited*, 84 *Federal Reserve Bulletin* 886 (1998); *Liu Chong Hing Bank*, 81 *Federal Reserve Bulletin* 905 (1995); *Hong Kong and Shanghai Banking Company*, 81 *Federal Reserve Bulletin* 902 (1995); and *Dah Sing Bank, Ltd.*, 80 *Federal Reserve Bulletin* 182 (1994).

¹⁴ CMB Order, at C24.

controls and procedures for the proposed branches to ensure compliance with U.S. law and for its operations in general.

With respect to access to information on Wing Lung's operations, the restrictions on disclosure in relevant jurisdictions in which Wing Lung operates have been reviewed, and relevant government authorities have been contacted regarding access to information. Wing Lung has committed to make available to the Board such information on its operations and on 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 extent that the provision of such information to the Board may be prohibited by law or otherwise, Wing Lung 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.¹⁵ In addition, subject to certain conditions, the HKMA may share information on Wing Lung'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 Wing Lung 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.¹⁶ 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 Wing Lung in its home jurisdiction; the scope of Wing Lung'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 Wing Lung in its home jurisdiction. 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 Wing Lung and CMB, as well as the terms and conditions set forth in this order, Wing Lung's application to establish a branch in San Francisco and to upgrade its limited branch in Alhambra to a full-service branch 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.¹⁷ Should any restrictions on access to information on the operations or activities of Wing Lung and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Wing Lung or its affiliates with applicable federal statutes, the Board may require termination of any of Wing Lung's direct or indirect activities in the United States, or in the case of any such operations licensed by the Office of the Comptroller of the Currency ("OCC"), recommend termination of such operation. Approval of this application also is specifically conditioned on compliance by Wing Lung and CMB with the commitments made in connection with this application and with the conditions in this order.¹⁸ The commitments and

¹⁵ CMB previously made these commitments. CMB Order, at C26.

¹⁶ 12 U.S.C. § 3105(d)(3)(E).

¹⁷ 12 CFR 265.7(d)(12).

¹⁸ The Board's authority to approve the establishment of the branches parallels the continuing authority of the OCC to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed offices of Wing Lung in accordance with any terms or conditions that the OCC may impose.

conditions referred to above are conditions imposed in writing by the Board in connection with this decision and may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective January 13, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board