



Legal Developments: Second Quarter, 2014

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Cullen/Frost Bankers, Inc.
San Antonio, Texas

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2014-10 (May 14, 2014)

Cullen/Frost Bankers, Inc. (“Cullen/Frost”), San Antonio, Texas, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to merge with WNB Bancshares, Inc. (“WNB Bancshares”), and thereby acquire its subsidiary bank, Western National Bank, both of Odessa, Texas. In addition, Cullen/Frost’s subsidiary state member bank, Frost Bank, San Antonio, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)² to merge with Western National Bank, with Frost Bank as the surviving entity. Frost Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the main office and the branches of Western National Bank.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 54647 (September 5, 2013)).⁴ As required by the Bank Merger Act, a report on the competitive effects of the bank 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.

Cullen/Frost, with consolidated assets of approximately \$24.4 billion, is the 55th largest insured depository organization in the United States, controlling approximately \$20.8 billion in deposits.⁵ Cullen/Frost controls Frost Bank, which operates only in Texas. Frost Bank is the sixth largest depository institution in Texas, controlling deposits of \$19.1 billion, which represent 2.9 percent of the total deposits of insured depository institutions in that state.⁶

¹ 12 U.S.C. § 1842.

² 12 U.S.C. § 1828(c).

³ 12 U.S.C. § 321. These locations are listed in the appendix.

⁴ 12 CFR 262.3(b).

⁵ Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

⁶ State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

WNB Bancshares, with total consolidated assets of \$1.5 billion, controls Western National Bank, which operates in Texas. Western National Bank is the 45th largest insured depository institution in Texas, controlling deposits of approximately \$1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Cullen/Frost would become the 53rd largest insured depository organization in the United States, controlling consolidated assets of approximately \$25.9 billion. Cullen/Frost would control total consolidated deposits of approximately \$22.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, Frost Bank would remain the sixth largest insured depository organization, controlling deposits of approximately \$20.3 billion, which represent 3.1 percent of the total deposits of insured depository institutions in that state.

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 an 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.⁷

Cullen/Frost and WNB Bancshares have subsidiary depository institutions that compete directly in the San Antonio, Texas, banking market.⁸ 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 relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by Cullen/Frost and WNB Bancshares;⁹ 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”);¹⁰ the number of competitors that would remain in the banking market; 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

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

⁸ The San Antonio banking market is defined as Bexar, Comal, Guadalupe, Kendall, and Wilson counties, all in Texas.

⁹ 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 to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁰ 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, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

the proposal, the banking market would remain highly concentrated, as measured by the HHI, and numerous competitors would remain.¹¹

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 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 Cullen/Frost and WNB Bancshares 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

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 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 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. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Cullen/Frost and Frost Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger, structured as an exchange of shares.¹² The asset quality, earnings, and liquidity of Frost Bank and Western National Bank are consistent with approval, and Cullen/Frost appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Cullen/Frost, WNB Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition,

¹¹ Cullen/Frost operates the second largest depository institution in the San Antonio banking market, with approximately \$7.1 billion in deposits, which represent 13.4 percent of market deposits. WNB Bancshares operates the 34th largest depository institution in the market, controlling deposits of approximately \$44.9 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Cullen/Frost would continue to operate the second largest depository institution in the market, controlling deposits of approximately \$7.1 billion, which represent 13.4 percent of market deposits. The HHI would increase by two points to 3061, and 52 competitors would remain in the market.

¹² Applicants would effect the acquisition by merging Special Prairie Holding Co., a wholly owned subsidiary of Cullen/Frost, with and into WNB Bancshares (with WNB Bancshares as the survivor). At the time of the merger, each share of WNB Bancshares common stock would be converted into a right to receive Cullen/Frost common stock and cash, based on an exchange ratio. Immediately after this merger, WNB Bancshares would merge with and into Cullen/Frost (with Cullen/Frost as the survivor).

the Board has considered its supervisory experiences and those of other bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

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

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

Cullen/Frost'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, as well as the records of effectiveness of Cullen/Frost and WNB Bancshares in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act 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 institutions under the Community Reinvestment Act ("CRA").¹⁴ 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,¹⁵ 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.¹⁶

The Board has considered all the facts of record, including reports of examination of the CRA performance of Frost Bank and Western National Bank, data reported by Frost Bank and Western National Bank under the Home Mortgage Disclosure Act ("HMDA"),¹⁷ other information provided by Cullen/Frost, confidential supervisory information, and the public comment received on the proposal. A commenter objected to the proposal and

¹³ Both the chairman and the chief executive officer of Cullen/Frost would continue in their roles following consummation of the proposed transaction.

¹⁴ 12 U.S.C. §§ 1842(c)(2) and 1828(c)(5); 12 U.S.C. § 2901 *et seq.*

¹⁵ 12 U.S.C. § 2901(b).

¹⁶ 12 U.S.C. § 2903.

¹⁷ 12 U.S.C. § 2801 *et seq.*

alleged that Frost Bank had engaged in discriminatory lending practices in the Houston, Texas, area.

A. 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.¹⁸ 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.¹⁹ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications 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 Frost Bank. Frost Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency ("OCC"), as of August 11, 2008 ("Frost Bank Evaluation"). Examiners noted that Frost Bank's lending levels reflected good responsiveness to its deposit market share and area credit needs, particularly regarding loans to small businesses, and that Frost Bank's level of community development loans was high.²⁰ Frost Bank received "high satisfactory" ratings on both the Lending Test and Investment Test and a "low satisfactory" rating on the Service Test.²¹

For the Lending Test, examiners noted that Frost Bank's lending levels reflected good responsiveness to its deposit market share and area credit needs, particularly regarding loans to small businesses.²² Examiners also observed that the bank's distribution of all CRA-reportable loans by income level of geography was good. Examiners did not identify any conspicuous gaps in the geographic distribution of home mortgage loans and small loans to businesses during the evaluation period, and they noted that the bank's distribution of loans inside its assessment areas was excellent. Examiners found that Frost Bank's distribution of all CRA-reportable loans by income level of the borrower was adequate.

Examiners noted that Frost Bank's performance in community development lending had a positive impact on Frost Bank's Lending Test performance in three of the bank's four full-scope assessment areas and an overall positive impact on the Lending Test conclusions. During the evaluation period, Frost Bank originated three loans totaling \$90,000 within the

¹⁸ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

¹⁹ 12 U.S.C. § 2906.

²⁰ The evaluation period for the Lending Test in the Frost Bank Evaluation was January 1, 2005, through December 31, 2007, except for community development loans, which had an evaluation period from January 1, 2005, through August 10, 2008. The evaluation period for the Investment Test and Service Test was from January 1, 2005, through August 10, 2008.

²¹ The Frost Bank Evaluation was conducted using Large Institution CRA Examination Procedures and included a full-scope assessment review of four areas: the Austin-Round Rock, Texas Metropolitan Statistical Area ("MSA") ("Austin MSA"); the Houston, Texas Assessment Area ("Houston AA"); the San Antonio, Texas Assessment Area ("San Antonio AA"); and the Tarrant County, Texas Assessment Area ("Tarrant County AA"). A limited-scope review was performed in the Brownsville-Harlingen, Texas and McAllen-Edinburg-Mission, Texas MSAs; the Corpus Christi, Texas Assessment Area; the Dallas County, Texas Assessment Area; and the Willacy County, Texas Assessment Area. Examiners placed approximately equal weight on the bank's performance in the Houston AA, the San Antonio AA, and the Tarrant County AA based on their respective shares of deposits and loans. Examiners placed less weight on the bank's performance in the Austin MSA given its smaller market share of loans and deposits.

²² In evaluating the Lending Test, examiners placed greater weight on Frost Bank's small business lending, which represented 74 percent of the bank's CRA-reportable loans originated or purchased during the evaluation period.

Austin MSA, 14 community development loans totaling approximately \$24.4 million in the Houston AA, 17 loans totaling approximately \$82.8 million in the San Antonio AA, and 16 loans totaling approximately \$42.5 million in the Tarrant County AA. Examiners noted that, in the Houston AA, Frost Bank originated an \$8.5 million loan for the construction and short-term financing of facilities for a nonprofit organization that provided services related to the treatment and prevention of alcohol and drug abuse. Examiners noted that the majority of the beneficiaries of the organization's services were LMI individuals.

In evaluating Frost Bank's performance under the Investment Test, examiners found that Frost Bank's investments were beneficial to, and met the identified needs of, the bank's assessment areas. During the evaluation period, Frost Bank made 103 investments, grants, and donations totaling approximately \$9.4 million within the Austin MSA; 103 investments, grants, and donations totaling approximately \$8.8 million within the Houston AA; 147 investments, grants, and donations totaling approximately \$15.7 million within the San Antonio AA; and 62 investments, grants, and donations totaling approximately \$9.5 million within the Tarrant County AA. In the Houston AA, Frost Bank's investments included mortgage-backed securities totaling approximately \$8.6 million and included donations to community organizations that promoted the growth of small businesses and that supported the needs of LMI individuals.

In evaluating Frost Bank's performance under the Service Test, examiners found that the bank's distribution of branches and the accessibility to its products and services in all assessment areas were adequate. Examiners noted that Frost Bank offered a payroll card product to large commercial customers to assist them with meeting the needs of the underserved and that minimum- and low-wage workers who did not have a banking relationship or a checking account benefited from the product. Examiners observed that Frost Bank provided a relatively high level of community development services in the assessment areas receiving a full-scope review.

During the course of the Frost Bank Evaluation, examiners did not find any evidence that Frost Bank engaged in discriminatory or other illegal credit practices.

CRA Performance of Western National Bank. Western National Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of October 15, 2009 ("Western National Bank Evaluation").²³ Examiners noted that Western National Bank made a substantial majority of its loans to borrowers within its CRA assessment areas, as measured by both number of loans and dollar amount.²⁴

As described in the Western National Bank Evaluation, the bank's performance under the Lending Test was rated "satisfactory." Examiners found that a substantial majority of the bank's loans sampled by examiners (78 percent of the number of loans and 68 percent of the dollar amount of the loans) were made within its assessment areas. Examiners found that the bank's distribution of loans made to individuals and families of different income levels and to businesses of different sizes was reasonable and that the geographic dispersion of Western National Bank's small business loans was reasonable throughout the assessment areas.

²³ The Western National Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures, and examiners reviewed a sample of the bank's small business loans from January 1, 2007, through August 31, 2009, and a sample of the bank's residential real estate lending from January 1, 2005, through August 31, 2009. The evaluation period for the Western National Bank Evaluation was April 20, 2005, through October 15, 2009.

²⁴ The Western National Bank Evaluation included a full-scope assessment review of two areas: the Midland, Texas MSA ("Midland MSA") and the Odessa, Texas MSA. A limited-scope review was performed in the Bexar County, Texas Assessment Area.

Western National Bank's performance under the Community Development Test was rated "satisfactory." Examiners found that the bank's community development performance reflected an adequate responsiveness to community development needs within the assessment areas. During the evaluation period, Western National Bank made 15 loans totaling approximately \$1.5 million to purchase lots and/or construct one-to-four-family residences for LMI persons in LMI census tracts within the Midland MSA. Western National Bank's qualified community development investments included donations to 19 organizations totaling approximately \$4.2 million. Western National Bank also purchased equity investments of which approximately \$1.7 million qualified as benefiting LMI households. Examiners noted that the bank, through its employees, was involved in a variety of community development services that reflected an adequate responsiveness to the communities' needs.

Frost Bank's efforts since the 2008 CRA Evaluation. The Federal Reserve Bank of Dallas ("Reserve Bank") began a CRA examination of Frost Bank in the second quarter of 2013.²⁵ Overall, examiners found that Frost Bank's CRA performance remained satisfactory.²⁶ Examiners found that Frost Bank's lending activity reflected good responsiveness to the bank's assessment area credit needs. The geographic distribution of loans reflected good penetration throughout the assessment areas, and the distribution of borrowers reflected good penetration among customers of different income levels and businesses of various revenue sizes. The bank's level of community development loans was adequate, and its qualified community development investments and grants in its assessment areas were significant. Frost Bank's retail services were found to be reasonably accessible to the bank's geographies and to individuals of different income levels, and the bank provided a relatively high level of community development services.

In the Houston AA, examiners found that the geographic distribution of Frost Bank's HMDA loans was good and borrower distribution was adequate. The geographic distribution of the bank's small business loans was good. During the review period, the percentage of the bank's small business loans originated in LMI census tracts and the percentage of the bank's small business loans to businesses with revenues of \$1 million or less exceeded the aggregate of all reporters of such data. Examiners found that during the review period, Frost Bank originated six community development loans totaling over \$39 million, including two community development loans that provided economic development to a low-income area and a loan to a Small Business Investment Company that specializes in providing long-term debt and equity capital to small businesses. In addition, Frost Bank made 79 separate investments totaling over \$11 million during the review period, including investments in multiple bonds designated for affordable housing. The bank provided numerous investments to ACCION Texas, which provides credit and services to small businesses and entrepreneurs who are unable to obtain financing from traditional sources. Examiners noted that Frost Bank was also particularly responsive in teaching financial literacy and assisting the Houston area in various ways after Hurricane Ike.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the record of Frost Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Frost Bank Evaluation and Frost Bank's record of performance in helping to meet the credit needs of its communities since the Frost Bank Evaluation, considered the Reserve Bank's recent evaluation of Frost Bank's compliance with fair lending laws, evaluated Frost

²⁵ The review period for the Lending Test was January 1, 2010, through December 31, 2011. The review period for the Investment Test and Service Test was August 11, 2008, through December 31, 2011.

²⁶ The findings and conclusions are in the process of being finalized.

Bank's fair lending policies and procedures, and considered the comment on the application.

HMDA Data and Fair Lending Analysis. The Reserve Bank recently conducted a review of Frost Bank's fair lending performance in Harris County, Texas, where Houston is located, and in Dallas County, Texas.²⁷ A commenter alleged that Frost Bank disfavors African American neighborhoods in the Houston area in Harris County with respect to access to its banking products and services and that the bank has engaged in redlining. The Reserve Bank considered the comment in connection with its review of Frost Bank's fair lending performance. The Reserve Bank analyzed Frost Bank's lending data, assessment area definitions, geographic distribution of branches, and marketing and outreach efforts, and the analysis did not confirm the commenter's assertion of redlining.

With respect to mortgage lending, Cullen/Frost represents that Frost Bank's percentage of HMDA-reportable applications in minority census tracts in the Houston, Texas MSA ("Houston MSA") approximated or exceeded that of the aggregate of all lenders in 2010, 2011, and 2012, and that Frost Bank's percentage of HMDA-reportable applications in African American census tracts in the Houston MSA exceeded that of the aggregate in all three years.²⁸

The Board believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide 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 Frost Bank excluded or denied credit to any group on a prohibited basis.²⁹ Fully evaluating Frost Bank's compliance with fair lending laws and regulations 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 lending disparities persist after taking into account legitimate underwriting factors.

Reserve Bank examiners reviewed Frost Bank's HMDA data in the Houston area for the period 2010-13.³⁰ The data revealed that the bank is making mortgage loans available in areas of Harris County in which the majority of residents are either African American or Hispanic. Frost Bank generally outperformed or was approximately comparable to its peer institutions in terms of receiving applications from and originating HMDA loans in African American or Hispanic census tracts in Harris County for the period 2010-13. Frost

²⁷ The Reserve Bank considered data from January 1, 2010, through December 31, 2013.

²⁸ Frost Bank also represents that it ceased origination of one-to-four-family conventional residential mortgage loans in 2000. Home improvement lending currently is the bank's primary HMDA-reportable product.

The commenter also alleged that Frost Bank discriminates against African Americans in its provision of factoring services. Frost Bank represents that it does not actively market factoring services and provides such services to a limited number of customers as an accommodation.

²⁹ 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 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 (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

³⁰ The 2013 HMDA peer data are preliminary.

Bank's percentage of applications from such tracts increased between 2010 and 2013. Frost Bank's percentage of originations in such tracts also increased between 2010 and 2013.³¹

The Reserve Bank reviewed the geographic distribution of Frost Bank's branches, the bank's marketing activities, and other community outreach efforts. The examination showed that there are no differences between services available at Frost Bank branch offices located in areas with concentrations of minority residents and other areas. Examiners, using a radius based on competition from other financial institutions, found that Frost Bank's branches reached a majority of the neighborhoods in the Houston area identified by the commenter. The branches in those neighborhoods do not have shorter operating hours. In addition, Frost Bank provides mobile branch vans in Harris County that are equipped to support a variety of financial products. Frost Bank's marketing activities and community outreach efforts include partnering with local nonprofit organizations to provide outreach to LMI communities and providing financial education to individuals and small businesses.

An underwriting and pricing review was also performed as part of the fair lending examination. The Reserve Bank reviewed HMDA data for all loan applications received by Frost Bank between 2010 and 2012. The review found that the bank followed its articulated underwriting guidelines and found no evidence of illegal credit discrimination.

The Board also reviewed Frost Bank's small business lending in Harris County for the period 2010-13. The data revealed that the bank is making small business loans available in areas in which the majority of residents are either African American or Hispanic. Frost Bank's percentage of small business loan originations in African American or Hispanic census tracts decreased by less than a percentage point between 2010 and 2013 and exceeded or was approximately comparable to its peers' origination of small business loans in such tracts between 2010 and 2012. In 2013, Frost Bank's percentage of small business loan originations in African American or Hispanic census tracts trailed its peers.³²

Frost Bank's Fair Lending Program. Frost Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and the Board has reviewed these policies. The company's legal and compliance risk-management program includes an annual fair lending risk assessment to analyze potential vulnerabilities in loan processes and controls and annual compliance training for applicable employees. Frost Bank analyzes its HMDA data at least annually for disparities in underwriting and pricing. Frost Bank's risk-management systems and its policies and procedures for ensuring compliance with fair lending laws would be implemented at the combined organization.³³

³¹ Frost Bank originated mortgage loans for the review period in zip codes of Harris County in which the majority of residents are African American, including some in or near the particular zip codes noted by the commenter. Examiners noted that home mortgage lending opportunities may be limited in the zip codes noted by the commenter by factors such as the relatively high percentage of renters, the proportion of residents living below the poverty level, and the relatively high unemployment rate.

³² Frost Bank originated small business loans for the review period in zip codes of Harris County in which the majority of residents are African American, including some in or near the particular zip codes noted by the commenter. The Reserve Bank's review of Dallas County, like the review of Harris County, did not disclose illegal credit discrimination based on its review of Frost Bank's assessment area, branching, lending, and marketing.

³³ Cullen/Frost has committed not to engage in any expansionary activities, including branching within its existing market areas, until such time that the Board has deemed Cullen/Frost to have clearly developed a policy to support future expansion in its compliance program, including fair lending, and to hire additional staff with requisite knowledge and experience to manage and control the bank's fair lending risk, which might be heightened by expansion.

C. 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.

Cullen/Frost represents that the proposal would provide opportunities to achieve cost savings for the combined organization by consolidating redundant functions, including data processing. Cullen/Frost 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. Cullen/Frost also states that the greater resources of the combined organization would increase credit availability to consumers and businesses in the communities that Western National Bank serves today.

Cullen/Frost also states that the proposal would offer customers convenience through a broader range of financial products and services. Cullen/Frost represents that customers of WNB Bancshares would have access to additional leasing, factoring, and asset-based lending services; improved online- banking cash management services; additional treasury management products for businesses; insurance products and services; trust, custody, and wealth management products and services; and additional products for individuals, such as personal lines of credit, home equity loans, home improvement loans, and home equity lines of credit. Cullen/Frost states that WNB Bancshares customers would have access to Cullen/Frost's call center and mobile application, which would increase access to banking services.

In addition, Cullen/Frost represents that the merger would benefit current customers of Western National Bank through access to significantly larger branch and ATM networks. The branch network available to Cullen/Frost and WNB Bancshares customers would increase from 115 and 8, respectively, to 122 locations throughout Texas.³⁴ Customers of Western National Bank would also gain access to Cullen/Frost's network of 132 bank-owned ATMs and free access to Valero Corner Store ATMs in Texas through Frost Bank's partnership with a third-party ATM network operator.

D. 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 Cullen/Frost, confidential supervisory information, the public comment on the proposal, and the commitments made by Cullen/Frost. Based on the above, the Board believes that the convenience and needs factor, including the CRA records 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 concen-

³⁴ Cullen/Frost proposes to close one branch of Western National Bank in San Antonio on consummation of the merger to consolidate overlapping locations within the branch structure of the combined organization. The branch is not located in an LMI area.

trated risk to the stability of the United States banking or financial system.”³⁵ The Dodd-Frank Act also amended the Bank Merger Act to require the Board to consider “the risk to the stability of the United States banking or financial system.”³⁶

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁷ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, that are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.³⁸

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Cullen/Frost would have approximately \$25.9 billion in consolidated assets and, by any of a number of alternative measures of firm size, would be between the 50th and 75th largest U.S. financial institution. 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 consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution’s complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, Cullen/Frost’s intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

³⁵ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

³⁶ Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1602, codified at 12 U.S.C. § 1828(c)(5).

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

³⁸ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

Other Considerations

Cullen/Frost also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of Western National Bank.³⁹ 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.⁴⁰

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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by Cullen/Frost with all the conditions imposed in this order, including receipt of all regulatory approvals, and on the commitments made to the Board in connection with the applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective May 14, 2014.

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

Robert deV. Frierson
Secretary of the Board

Appendix

Branches in Texas to be Established by Frost Bank

Odessa
801 N. Texas Avenue
2700 West County Road
2710 Grandview
3501 Faudree Road

Midland
508 W. Wall Street
800 West Wadley
4101 North Midland Drive

San Antonio
12800 San Pedro Avenue

³⁹ As discussed above, Cullen/Frost proposes to close one branch of Western National Bank in San Antonio.

⁴⁰ 12 U.S.C. § 322; 12 CFR 208.6(b).

First Interstate BancSystem, Inc.
Billings, Montana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2014-11 (June 30, 2014)

First Interstate BancSystem, Inc. (“FIB”), Billings, Montana, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to merge with Mountain West Financial Corp. (“MWF”) and thereby indirectly acquire its subsidiary bank, Mountain West Bank, National Association (“Mountain West Bank”), both of Helena, Montana.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 15344 (2014)).² 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.

FIB, with consolidated assets of approximately \$7.6 billion, is the 115th largest insured depository organization in the United States, controlling approximately \$6.1 billion in deposits.³ FIB’s bank subsidiary, First Interstate Bank, operates in Montana, South Dakota, and Wyoming. First Interstate Bank is the second largest depository institution in Montana, controlling deposits of approximately \$3.0 billion, which represent 15.2 percent of total deposits of insured depository institutions in that state.⁴

MWF, with total consolidated assets of approximately \$639.6 million, controls Mountain West Bank, which operates only in Montana. Mountain West Bank is the sixth largest insured depository institution in Montana, controlling deposits of approximately \$529.0 million, which represent 2.7 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, FIB would become the 110th largest depository organization in the United States, with total consolidated assets of approximately \$8.2 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. FIB would have total deposits of approximately \$6.7 billion. In Montana, FIB would become the largest depository organization, controlling deposits of approximately \$3.5 billion, which represent 17.9 percent of the total deposits of insured depository institutions in the 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

¹ 12 U.S.C. § 1842.

² 12 CFR 262.3(b).

³ Asset data are as of March 31, 2014, and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

⁴ State deposit data are as of June 30, 2013. In this context, insured depository institutions include commercial banks, savings and loan associations, cooperative banks, industrial banks, and savings banks.

to be served.⁵ FIB and MWF have subsidiary depository institutions that compete directly in the Montana banking markets of Bozeman, Great Falls, Helena, Kalispell, and Missoula.

A. Competitive Effects in the Banking Markets

The Board has reviewed the competitive effects of the proposal in each of the banking markets in which First Interstate Bank and Mountain West Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in depository institutions in the market (“market deposits”) controlled by FIB and MWF;⁶ 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”);⁷ and other characteristics of the market.

Banking Markets within Established Guidelines. Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the Bozeman, Great Falls, Kalispell, and Missoula banking markets.⁸ On consummation of the proposal, the Bozeman, Great Falls, and Missoula banking markets would remain moderately concentrated and the changes in market concentrations would be well within the DOJ Bank Merger Guidelines and Board precedent. The Kalispell banking market would remain highly concentrated, as measured by the HHI, and the change in the HHI in the market would be small. In each of these banking markets, numerous competitors would remain.

Banking Market Warranting Special Scrutiny. The structural effects that consummation of the proposal would have on the Helena banking market⁹ warrant a detailed review because the concentration level on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. First Interstate Bank is the fifth largest depository institution in the market, controlling approximately \$69.7 million in deposits, which represent 5.7 percent of market deposits. Mountain West Bank is the third largest depository institution in the market, controlling approximately \$247.0 million in deposits, which represent 20.1 percent of market deposits. On consummation, the combined entity would be the largest depository institution in the Helena banking market, controlling approximately \$316.7 million in

⁵ 12 U.S.C. § 1842(c)(1).

⁶ 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 weight and deposits held by credit unions are assigned zero weight. 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, 387 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743, 744 (1984). 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, 55 (1991).

⁷ 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), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

⁸ These four banking markets and the competitive effects of the proposal in these markets are described in the appendix.

⁹ The Helena banking market is defined as Lewis and Clark, Meagher, and Broadwater counties, the Boulder Division in Jefferson County, and the eastern half of the Avon-Elliston Division in Powell County, all in Montana.

deposits, which would represent approximately 25.8 percent of market deposits. The HHI in this market would increase by 229 points, from 1640 to 1869.

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 Helena banking market.¹⁰ Several factors indicate that the increase in concentration in the Helena banking market, as measured by the HHI and market share, overstates the potential competitive effects of the proposal in the market. After consummation of the proposal, 11 commercial bank competitors would remain, some with a significant presence in the market. The second and third largest bank competitors in the market would control approximately 21.1 percent and 19.7 percent of market deposits, respectively, and another bank competitor in the market would control approximately 6.6 percent of market deposits.

In addition, the Board has evaluated the competitive influence of American Federal Savings Bank (“American Federal”), a thrift institution operating in the Helena banking market.¹¹ American Federal’s commercial and industrial loan portfolios are similar to those of commercial banks in the market, as measured in terms of the ratios of those types of loans to total loans and assets.¹² Moreover, American Federal provides a broad range of banking services similar to those normally provided by commercial banks. In addition, American Federal has recently announced plans to convert to a state-chartered commercial bank. Accordingly, the Board has concluded that deposits controlled by this institution should be weighted at 100 percent in the market-share calculations.

In addition, two community credit unions in the Helena banking market, Helena Community Credit Union and Rocky Mountain Credit Union, each offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the Helena banking market. Accordingly, the Board finds that these circumstances warrant including the deposits of these credit unions on a 50 percent weighted basis.¹³

If the deposits held by the competitively active thrift are reweighted from 50 percent to 100 percent, and the deposits held by each of the competitively active credit unions are reweighted from zero percent to 50 percent, the pro forma deposit share of First Interstate Bank in the Helena banking market would be 22.7 percent, and the HHI would

¹⁰ 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).

¹¹ The Board previously has indicated that it may consider the competitiveness of a thrift institution at a level greater than 50 percent of its deposits when appropriate if competition from the institution closely approximates competition from a commercial bank. *See, e.g., Banknorth Group, Inc.*, 75 *Federal Reserve Bulletin* 703 (1989). Where, as here, the facts and circumstances of a banking market indicate that a particular thrift serves as a significant source of commercial loans and provides a broad range of consumer, mortgage, and other banking products, the Board has concluded that competition from such a thrift closely approximates competition from a commercial bank and that deposits controlled by the institution should be weighted at 100 percent in market-share calculations. *See, e.g., River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); and *Banknorth Group, Inc.*, *supra*.

¹² American Federal has a ratio of commercial and industrial loans to assets of approximately 6 percent, which is comparable to, or greater than, the ratio for some commercial banks in the market and greater than the ratio for some thrift institutions that the Board has previously found to be full competitors of commercial banks.

¹³ The Board previously has considered competition from certain active credit unions with those features as a mitigating factor. *See, e.g., Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation supra*, ; *Passumpsic Bancorp*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

increase by 177 points to 1548. Reweighting the deposit shares of competitively active thrifts and credit unions in this manner is consistent with past Board precedent. The Board has concluded that the activities of these organizations exert a competitive influence that mitigates, in part, the potential effects of the proposal on the Helena banking market. In addition, numerous competitors would remain in the Helena banking market.

B. Views of Other Agencies and Conclusion on Competitive Considerations

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 market in which First Interstate Bank and Mountain West Bank 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

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 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 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 combined 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. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. FIB and First Interstate Bank are well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, structured as a cash and share exchange.¹⁴ The asset quality, earnings, and liquidity of First Interstate Bank are consistent with approval, and FIB appears to have adequate resources to absorb the costs of the proposal and to complete the integration of FIB's and MWF's operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of FIB, MWF, 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

¹⁴ Each outstanding share of MWF common stock would be canceled and converted into a right to receive cash and FIB's Class A common stock based on an exchange ratio. FIB has the resources to fund the cash consideration portion of the transaction.

the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

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

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

FIB's supervisory record, managerial and operational resources, and plans for operating the combined organization 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, as well as the records of effectiveness of FIB and MFW in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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 First Interstate Bank and Mountain West Bank, information provided by FIB, and confidential supervisory information.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.¹⁸ 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 commu-

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

nity, including LMI neighborhoods.¹⁹ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications 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 First Interstate Bank. First Interstate Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Minneapolis ("Reserve Bank") in July 2013 ("First Interstate Bank Evaluation"). First Interstate Bank received "outstanding" ratings for the Lending Test, the Investment Test, and the Service Test.²⁰ In addition to the overall "outstanding" rating that First Interstate Bank received, the bank received separate overall "outstanding" ratings in the states reviewed.²¹

In evaluating the Lending Test, Reserve Bank examiners found that the bank's overall lending activity was excellent. The bank originated a substantial majority of loans within its Montana, Wyoming, and South Dakota assessment areas and showed excellent responsiveness to credit needs throughout its assessment areas. Examiners noted that the bank had an excellent record of lending to borrowers of different income levels and to businesses and farms of different sizes. Further, First Interstate Bank's overall geographic distribution of loans was excellent throughout the bank's assessment areas, including LMI geographies, and there were no unexplained gaps in the bank's lending patterns.

Examiners also noted that First Interstate Bank is a leader in making community development loans inside its assessment areas and uses flexible and innovative lending practices to serve credit needs, especially programs that support affordable homeownership. Since the previous evaluation, the bank originated 71 community development loans totaling approximately \$69.0 million, which represented an approximately \$22.2 million increase in community development lending from the previous evaluation.²²

In evaluating the Investment Test, Reserve Bank examiners found that First Interstate Bank had an overall excellent level of qualified investments that demonstrated excellent responsiveness to community development needs. Examiners highlighted numerous CRA-qualified investments that the bank made, as well as donations to organizations with a community development focus. The bank also participated in various CRA-qualified investment vehicles and made extensive use of innovative and complex investments, often in a leadership position, when opportunities existed. Examiners noted that First Interstate Bank's CRA-qualified investments increased from approximately \$70.5 million to approximately \$75.1 million since the prior evaluation.

¹⁹ 12 U.S.C. § 2906.

²⁰ The evaluation period was from January 1, 2011, through December 31, 2012.

²¹ The First Interstate Bank Evaluation was conducted using Large Institution CRA Examination Procedures and included full-scope reviews of at least one assessment area within each state where First Interstate Bank has an office. The First Interstate Bank Evaluation included a full-scope review of four assessment areas: the Billings, Montana Metropolitan Statistical Area ("MSA"); the Missoula, Montana MSA; the Casper, Wyoming MSA; and the Rapid City, South Dakota MSA. A limited scope review was performed in the Great Falls, Montana MSA; the Bozeman, Montana Assessment Area ("AA"); the Hamilton, Montana AA; the Hardin/Miles City, Montana AA; the Helena, Montana AA; the Kalispell, Montana AA; the Cheyenne, Wyoming MSA; the Jackson, Wyoming AA; the Laramie, Wyoming AA; the Riverton, Wyoming AA; the Sheridan, Wyoming AA; the Spearfish/Belle Fourche, South Dakota AA; and the Hot Springs/Edgemont/Custer, South Dakota AA. Examiners placed the greatest weight on the bank's performance in Montana because most of the bank's lending occurs in this state.

²² The bank also originated five loans totaling approximately \$18.9 million that benefitted areas outside of the bank's Montana and Wyoming assessment areas. Because the bank's activities adequately address the community development needs of its assessment areas, loans that benefit geographies outside of the bank's assessment areas can be considered in the evaluation of the bank's community development lending.

In evaluating the Service Test, examiners noted that the bank's retail services were accessible to all portions of the bank's assessment areas, including LMI census tracts. Examiners also noted that First Interstate Bank's opening and closing of branches had not adversely affected the accessibility of its products and services throughout the assessment areas. Examiners also found that the bank's services were tailored to the convenience and needs of LMI census tracts and individuals. Further, examiners highlighted that First Interstate Bank was a leader in providing community development services throughout its assessment areas.

CRA Performance of Mountain West Bank. Mountain West Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency in December 2011 ("Mountain West Bank Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.²³

In evaluating the Lending Test, examiners noted that the bank originated a substantial majority of its loans within its assessment areas.²⁴ Examiners also found that the bank's geographic dispersion of loans reflected reasonable penetration throughout its assessment areas and the bank's distribution of loans by revenue and income levels reflected a reasonable penetration among individuals of different income levels and businesses of different sizes. Further, examiners concluded that Mountain West Bank's loan-to-deposit ratio was more than reasonable given Mountain West Bank's size, financial condition, and the assessment areas' credit needs.

In evaluating the Community Development Test, examiners noted that Mountain West Bank's level of community development activities represented satisfactory responsiveness to community development needs in its assessment areas through qualified investments and community development services. Examiners also found that Mountain West Bank provided an excellent level of community development services through its employee involvement in community based organizations that benefit LMI individuals.

B. 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.

FIB represents that the proposed transaction would provide Mountain West Bank's customers with access to additional wealth management services, cash management services, dealer financing, in-house mortgage products, adjustable rate mortgage products, and broader credit card programs. FIB also states that FIB's higher legal lending limit would allow it to provide additional credit availability and flexibility to meet the larger credit needs of Mountain West Bank's customers.

In addition, FIB represents that the merger would benefit current customers of Mountain West Bank through access to a broader network of branches and ATMs. Although FIB

²³ The Mountain West Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures, and examiners reviewed the bank's commercial and residential real estate lending activity from August 19, 2008, to September 30, 2011, for the Lending Test. Commercial and residential real estate loans were selected for analysis because they represented 63 percent and 18 percent, respectively, of the bank's loan portfolio. The evaluation period for the Community Development Test was from August 19, 2008, to December 8, 2011.

²⁴ The Mountain West Bank Evaluation reviewed the bank's Helena, Montana non-MSA AA; the Great Falls, Montana MSA; and the Missoula, Montana MSA.

plans to consolidate or close several branches following the merger, as there are some Mountain West Bank branches that are located within two miles of First Interstate Bank branches, Mountain West Bank customers will continue to have access to services in each of the communities currently served by Mountain West Bank.²⁵ In addition, FIB represents that these customers would gain access to services at branches and ATMs in each of the communities served by First Interstate Bank, including communities in Montana, Wyoming, and South Dakota. FIB also notes that its increased market presence in Mountain West Bank's markets would result in increased community service projects and philanthropic efforts in those markets.

C. 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 FIB, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of First Interstate Bank and Mountain West Bank, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records 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."²⁶

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

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, FIB would have approximately \$8.2 billion in consolidated assets and would be the 122nd largest financial

²⁵ Although FIB has not determined which branches will be closed, FIB represents that the closures will be made in accordance with FIB's branch closure policies and governing law and regulations.

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

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

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

institution in the United States as measured by assets. 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, FIB's intrafinancial assets and liabilities would comprise a negligible share of the systemwide total, both before and after the transaction, and the resulting firm would control less than 0.1 percent of the assets of all U.S. depository institutions. 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. 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 FIB 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 June 30, 2014.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

FIB/MWF banking markets in Montana consistent with Board precedent and DOJ Bank Merger Guidelines						
Status	Rank	Amount of deposits	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Bozeman, Montana —includes Gallatin and Park counties, both in Montana.						
FIB pre-consummation	2	\$381.9M	17.1	1190	44	17
MWF	13	\$28.6M	1.3	1190	44	17
FIB post-consummation	2	\$410.5M	18.4	1190	44	17
Great Falls, Montana —includes Teton, Cascade, Judith Basin, Glacier, Toole, and Pondera counties; and Fort Benton and Geraldine divisions in Chouteau County, all in Montana.						
FIB pre-consummation	4	\$257.8M	12.5	1465	168	14
MWF	6	\$139.5M	6.7	1465	168	14
FIB post-consummation	1	\$397.3M	19.2	1465	168	14
Kalispell, Montana —includes Lincoln and Flathead counties; the Big Fork-Swan River Division; and the northern portion of Flathead Division that includes the communities of Polson, Finley Point, Big Arm, Elmo and Dayton in Lake County, all in Montana.						
FIB pre-consummation	2	\$349.1M	16.3	2907	68	15
MWF	7	\$44.7M	2.1	2907	68	15
FIB post-consummation	2	\$393.8M	18.4	2907	68	15
Missoula Montana —includes Missoula County; the Superior and Alberton divisions in Mineral County; Helmsville and the western half of Avon-Elliston divisions in Powell County; the southern half of Flathead Division in Sanders County; the southern portion of Flathead Division that includes the communities of Pablo, Kicking Horse, Post Creek, Moiese, Ravalli, Arlee, Charlo, Ronan, and Saint Ignatius in Lake County; the Drummond Division in Granite County; and Ravalli County (minus the eastern third of Sula-Edwards Division), all in Montana.						
FIB pre-consummation	1	\$643.0M	24.2	1525	125	17
MWF	8	\$69.2M	2.6	1525	125	17
FIB post-consummation	1	\$712.1M	26.8	1525	125	17
Note: Deposit data are as of June 30, 2013. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.						

MB Financial Inc. Chicago, Illinois

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2014-12 (June 30, 2014)

MB Financial, Inc. (“MB Financial”), Chicago, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to merge with Taylor Capital Group, Inc. (“Taylor Capital”), Rosemont, and thereby indirectly acquire its subsidiary bank, Cole Taylor Bank, Chicago, all of Illinois. Following the proposed acquisition, Cole Taylor Bank would be merged into MB Financial’s subsidiary bank, MB Financial Bank, National Association (“MB Financial Bank”), Chicago.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Federal Register* 59938 (September 30, 2013)). 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.

MB Financial, with consolidated assets of approximately \$9.6 billion, is the 101st largest insured depository organization in the United States, controlling approximately \$7.4 billion

¹ 12 U.S.C. § 1842.

² The merger of Cole Taylor Bank into MB Financial Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12U.S.C. § 1828(c).

in consolidated deposits.³ MB Financial Bank operates in Illinois, Indiana, and Pennsylvania. MB Financial Bank is the 12th largest depository institution in Illinois, controlling deposits of approximately \$7.5 billion, which represent 1.8 percent of the total deposits of insured depository institutions in the state.⁴ In addition, MB Financial Bank is the 199th largest depository institution in Pennsylvania, controlling deposits of \$46.7 million, and is the 168th largest depository institution in Indiana with approximately \$3.0 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

Taylor Capital, with total consolidated assets of \$5.7 billion, controls Cole Taylor Bank, which operates in Illinois. Cole Taylor Bank is the 18th largest insured depository institution in Illinois, controlling deposits of approximately \$3.8 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, MB Financial would become the 81st largest insured depository organization in the United States, with total consolidated assets of approximately \$15.3 billion. MB Financial would have total consolidated deposits of approximately \$11.0 billion. In Illinois, MB Financial would become the ninth largest depository organization, controlling deposits of approximately \$11 billion, which represent 2.8 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.⁵

MB Financial and Taylor Capital have subsidiary depository institutions that compete directly in the Chicago, Illinois, banking market.⁶ 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 markets (“market deposits”) controlled by MB Financial and Taylor Capital;⁷ 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”);⁸ and other characteristics of the market.

³ Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

⁴ State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁵ 12 U.S.C. § 1842(c)(1).

⁶ The Chicago banking market is defined as Cook, Du Page, and Lake counties, all in Illinois.

⁷ 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 to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989) and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

⁸ 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 concen-

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.⁹

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 market in which MB Financial and Taylor Capital 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

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 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 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. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. MB Financial and MB Financial Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.¹⁰ The asset quality, earnings, and liquidity of both MB Financial Bank and Cole Taylor Bank are consistent with approval, and MB Financial appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

trated 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, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

⁹ MB Financial operates the 10th largest depository institution in the Chicago banking market with approximately \$7.3 billion in deposits, which represent 2.6 percent of market deposits. Taylor Capital operates the 14th largest depository institution in the same market, controlling deposits of approximately \$3.8 billion, which represent 1.3 percent of market deposits. On consummation of the proposed transaction, MB Financial would operate the seventh largest depository institution in the market, controlling weighted deposits of approximately \$11.0 billion, which represent 3.9 percent of market deposits. The HHI would increase by seven points to 1016, and 147 competitors would remain in the market.

¹⁰ As part of the proposed transaction, each share of Taylor Capital common stock would be converted into a right to receive cash and MB Financial common stock based on an exchange ratio.

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 MB Financial, Taylor Capital, 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.

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

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

MB Financial'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, as well as the records of effectiveness of MB Financial and Taylor Capital in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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").¹¹ 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,¹² 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.¹³

The Board has considered all the facts of record, including reports of examination of the CRA performance of MB Financial Bank and Cole Taylor Bank, data reported by MB Financial Bank and Cole Taylor Bank under the Home Mortgage Disclosure Act

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

¹² 12 U.S.C. § 2901(b).

¹³ 12 U.S.C. § 2903.

(“HMDA”),¹⁴ other information provided by MB Financial, confidential supervisory information, and the public comment received on the proposal. The commenter does not oppose approval of the proposal but expressed concerns about Cole Taylor Bank’s lending record to minority and LMI borrowers as reflected in 2011 HMDA data.

A. 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.¹⁵ 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.¹⁶ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications 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 MB Financial Bank. MB Financial Bank, the lead bank for the Applicant, was assigned an overall “outstanding” rating at its most recent CRA performance evaluation by the OCC, as of August 12, 2013 (“MB Financial Bank Evaluation”).¹⁷ MB Financial Bank received “outstanding” ratings on both the Lending Test and the Investment Test and a “high satisfactory” rating on the Service Test.¹⁸

In evaluating the Lending Test, examiners observed that the bank’s overall lending activity in the Chicago AA was excellent. Examiners found that the geographical distribution of the bank’s home mortgage lending and small business lending in the Chicago Multi-State MSA was adequate and excellent, respectively.¹⁹ Examiners found that the bank’s distribution of home mortgage loans by income level of borrower in the Chicago Multi-State MSA was adequate, given the product lines offered by the institution, and its distribution of small loans to businesses with gross annual revenues of \$1 million or less was adequate based on economic conditions and the competitive market in which the bank operates.

Examiners found that MB Financial Bank’s community development lending in the Chicago AA was significant, and that the bank originated an excellent level of community development loans during the evaluation period. Examiners also noted that the bank is a

¹⁴ 12 U.S.C. § 2801 *et seq.*

¹⁵ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (March 11, 2010).

¹⁶ 12 U.S.C. § 2906.

¹⁷ The MB Financial Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2010, through December 31, 2012, except for community development loans, which had an evaluation period from April 28, 2010, through August 12, 2013. The evaluation period for the Investment Test and the Service Test was April 28, 2010, through August 12, 2013.

¹⁸ The MB Financial Bank Evaluation included a full-scope review of three assessment areas: the Chicago, Illinois, Assessment Area (“Chicago AA”); the LaSalle County, Illinois, Assessment Area; and the Philadelphia, Pennsylvania, Assessment Area. A limited-scope review was performed in the Lake County, Illinois, Assessment Area and the Indiana Assessment Area. Examiners placed greater weight on the bank’s performance in its assessment areas falling within the Chicago-Naperville-Joliet Multi-State Metropolitan Statistical Area (“Chicago Multi-State MSA”), which comprises the Chicago AA and the assessment areas selected for limited-scope review, because these areas represented the bank’s most significant market in terms of deposit concentrations, branch distributions, and CRA-reportable loans.

¹⁹ Examiners placed more emphasis on the bank’s distribution of small business loans than the distribution of home mortgage loans because of MB Financial Bank’s higher market share in small business lending. MB Financial Bank’s market share as of June 30, 2011, in the Chicago AA was 0.9 percent and 0.2 percent for small loans to businesses and mortgage lending, respectively. Within the home mortgage loan category, greater weight was placed on home refinance loans because they composed more than half of MB Financial Bank’s home mortgage lending.

participant in a number of governmental and privately sponsored programs that are designed to provide more flexible loan terms to LMI individuals and to small businesses.

In evaluating the Investment Test, examiners found that MB Financial Bank's responsiveness to the community development needs in the Chicago AA was excellent. During the evaluation period, the bank made investments and grants in the Chicago AA totaling approximately \$42 million. Examiners noted that 76 percent of the bank's qualifying investments were to organizations that focus on affordable housing, a critical need in the Chicago AA; 15 percent were made to organizations that support community development financing by financing small businesses; and 9 percent went to organizations that support the revitalization of LMI geographies.

For the Service Test, examiners found that MB Financial Bank's performance in the Chicago AA was good. Examiners observed that the bank's branch distribution in these areas was adequate, and that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners found that MB Financial Bank provided an excellent level of community development services, which had a significantly positive impact on the Service Test rating, and that the bank is a leader in providing community development services, which are highly responsive to community needs.

CRA Performance of Cole Taylor Bank. Cole Taylor Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago ("Reserve Bank"), as of April 9, 2012 ("Cole Taylor Bank Evaluation"). Examiners noted that Cole Taylor Bank's lending levels reflected good responsiveness to assessment area credit needs, and that the bank was a leader in making community development loans.²⁰ Cole Taylor Bank received a "high satisfactory" rating for the Lending Test, and an "outstanding" rating on both the Investment Test and the Service Test.

For the Lending Test, examiners noted that Cole Taylor Bank's level of home mortgage, small business, and consumer lending activity reflected good responsiveness to assessment area credit needs considering the bank's resources, business strategy, community needs and opportunities, as well as strained economic conditions during the evaluation period.²¹ Reserve Bank examiners noted that the bank's lending levels reflected good responsiveness to assessment area credit needs. Examiners found that the bank's geographic distribution of loans reflected excellent penetration throughout the assessment area, and the borrower distribution reflected adequate distribution among borrowers of different income levels and businesses of different revenue sizes. Examiners observed that the bank's 2011 performance in home mortgage lending to LMI borrowers represented an improvement over 2009 and 2010.

Examiners noted that Cole Taylor Bank is a leader in making community development loans. For example, during the evaluation period, the bank originated 57 qualified community development loans totaling approximately \$173 million.

²⁰ The evaluation period for the Lending Test in the Cole Taylor Bank Evaluation was from January 1, 2009, through December 31, 2011, except for community development loans, which had an evaluation period from January 19, 2010, through April 9, 2012. The evaluation period for the Investment Test and the Service Test was from January 19, 2010, through April 9, 2012. Consumer loan data for the period from January 1, 2009, through December 31, 2010, were also considered.

²¹ With respect to the Lending Test, examiners placed more weight on Cole Taylor Bank's home mortgage lending activity and less weight on its performance in consumer lending because of the bank's relatively low volume of consumer lending activity. During the evaluation period, Cole Taylor Bank originated approximately \$2.8 billion and \$19.7 million in home mortgage loans and consumer loans, respectively.

In evaluating the Investment Test, examiners observed that the bank made an excellent level of qualified community development investments and grants, often in a leadership position. Examiners also found that Cole Taylor Bank exhibited excellent responsiveness to credit and community development needs by supporting organizations that provide financing to small businesses and affordable housing for LMI individuals.

In evaluating the Service Test, examiners found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels in its assessment area. Examiners observed that Cole Taylor Bank was a leader in providing community development services within its assessment area, and that the bank provided community development services through employee and officer involvement, most notably in leadership capacities, relating to banking and financial services.

During the course of the Cole Taylor Bank Evaluation, examiners did not find any evidence that Cole Taylor Bank engaged in discriminatory or other illegal credit practices.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of MB Financial Bank and Cole Taylor Bank in complying with fair lending and other consumer protection laws.²² As part of this consideration, the Board reviewed the MB Financial Bank Evaluation and the Cole Taylor Bank Evaluation, assessed Cole Taylor Bank's HMDA data, and considered the comment on the application criticizing Cole Taylor Bank's lending record. The Board also considered MB Financial Bank's fair lending policies and procedures and confidential supervisory information.

HMDA Data and Fair Lending Analysis. The commenter focused on Cole Taylor Bank's lending record, alleging, based on 2011 HMDA data, that Cole Taylor Bank made a lower percentage of its mortgage loans to African Americans, Hispanics, and LMI borrowers than all lenders in the Chicago, Illinois, area. The commenter expressed concern that Cole Taylor Bank's underperformance in underserved markets would compromise MB Financial Bank's above-average record of home lending to LMI borrowers and borrowers of color.

MB Financial represents that 2012 HMDA data show that Cole Taylor Bank made a larger percentage of HMDA-reportable loans to Hispanic borrowers than the aggregate of all lenders and that Cole Taylor Bank's percentage of HMDA loans to African American borrowers increased when compared to the 2011 percentage.

The Board reviewed Cole Taylor Bank's HMDA data in the Chicago area for the period 2010–13. The Board's analysis confirmed the disparities noted by the commenter for 2011. The data revealed that Cole Taylor Bank improved the number and percentage of its mortgage loans to African Americans in 2012 and 2013 but continued to lag the aggregate of all

²² The Board has entered into a Consent Order with Cole Taylor Bank for violations of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) ("FTC Act"), related to disbursements of student loan funds for colleges and universities by an institution-affiliated party. Cole Taylor Bank terminated this arrangement in August 2013. As part of the Consent Order, Cole Taylor Bank has agreed that, in the event it enters into a similar relationship with another third-party student lender, it will develop a plan, acceptable to the Federal Reserve, to enhance its consumer compliance risk-management program to ensure that the soliciting, marketing, and servicing of the consumer deposit product in connection with the third party comply with all consumer protection laws and regulations, including section 5(a)(1) of the FTC Act. Cole Taylor Bank also agreed to pay a civil monetary penalty of \$3.51 million. MB Financial has committed that the provisions of the Cease and Desist Order between Cole Taylor Bank and the Board that provide for restitution shall be binding upon MB Financial as a successor to Taylor Capital, taking into consideration MB Financial's plan to merge Cole Taylor Bank into MB Financial Bank.

lenders. For Hispanic borrowers, the bank improved the number and percentage of its mortgage loan originations in 2012, exceeding the aggregate. In addition, compared to 2011, the data show that in 2012, the number and percentage of Cole Taylor Bank's mortgage loan originations to LMI borrowers and the borrowers in LMI census tracts improved and were consistent with the aggregate. The 2013 data showed that the bank's home loan originations to Hispanic borrowers and to LMI borrowers and communities were generally consistent with the aggregate.²³

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide 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 and ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Cole Taylor Bank excluded or denied credit to any group on a prohibited basis.²⁴

In response to the lending disparities identified by the commenter, the Reserve Bank conducted a combination onsite and offsite examination of Cole Taylor Bank covering the portion of the Chicago-Naperville-Joliet, Illinois, Metropolitan Division that Cole Taylor Bank delineates as its assessment area, which consists of Cook, DuPage, and Lake counties, all in Illinois. As an initial matter, Reserve Bank examiners found that Cole Taylor Bank's assessment area did not present evidence of redlining, observing that majority-minority census tracts were not arbitrarily excluded. The Reserve Bank's examination also focused on the bank's home-mortgage lending patterns, marketing materials, and lending strategies.

In evaluating home-mortgage lending patterns, Reserve Bank examiners reviewed the bank's lending data from 2010–12 and did not find a trend of increasing lending disparities. Examiners noted that the bank's lending volumes to minorities had increased and that Cole Taylor Bank's originations exceeded the aggregate. In reviewing the bank's marketing, examiners noted that the bank's marketing campaigns included the entire assessment area, and the bank's marketing practices and materials did not show evidence of redlining. Reserve Bank examiners found that the bank's loan and underwriting and pricing policies were neutral regarding the treatment of applicants. Reserve Bank examiners also reviewed the bank's policies, procedures, forms, credit applications, and lending practices for evidence of discrimination and to ensure compliance with fair lending laws.

As part of the scoping process for the Cole Taylor Bank Evaluation, underwriting and pricing analyses were performed using 2010 home mortgage data to analyze disparities by gender and ethnicity. The analysis found no statistically significant differences in denial rates or pricing factors based on gender or ethnicity.

MB Financial's Fair Lending Program. MB Financial 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 fair lending risk assessment that is updated annually, or more frequently based on material

²³ The 2013 HMDA peer data are preliminary.

²⁴ 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 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 (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

changes to the bank's strategy, operations, products or services; fair lending training for employees involved in all stages of the credit process; pricing analyses and data accuracy reviews by the compliance department; marketing material reviews; and regular monitoring of complaints.

MB Financial's internal audit department conducted a comparative file review of residential real estate loan applications received for the period 2011 through 2012, and no evidence of discriminatory practices was found. In addition, OCC examiners found no evidence of discriminatory or other illegal credit practices as part of the MB Financial Bank Evaluation.

On consummation of the transaction, MB Financial has committed to implement a compliance management system that combines the strengths of its and Cole Taylor Bank's fair lending programs and would increase the number of compliance staff. MB Financial would maintain the dedicated mortgage compliance unit and the fair lending program management function at Cole Taylor Bank's mortgage subsidiary, Cole Taylor Mortgage, LLC, and would update MB Financial's annual fair lending risk assessment to incorporate the scale and size of Cole Taylor Bank's mortgage business, as well as its loan servicing activities. MB Financial plans to establish a Fair Lending Action Committee, currently in use at Cole Taylor Bank, to manage fair lending risk. The committee would report to MB Financial's Operational and Compliance Risk Committee, which reports to executive management and MB Financial's Enterprise Risk Committee.

MB Financial has committed that, following consummation of the merger of MB Financial Bank with Cole Taylor Bank 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, including lending to LMI communities and minority and LMI borrowers, small business lending, and community development lending and investments in LMI communities in the combined organization's assessment area that are commensurate with or that exceed MB Financial Bank's and Cole Taylor Bank's improved performance in 2012.

C. Additional Information on Convenience and Needs 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. The commenter alleged that the proposal would not provide a clear or significant public benefit.

MB Financial represents that the proposal would result in cost savings for the combined organization by consolidating redundant functions, including data processing. MB Financial 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.

MB Financial also states that the proposal would offer customers convenience through a broader range of financial products. MB Financial represents that customers of Taylor Capital would have access to additional savings account products; general-use prepaid cards, gift cards, and secured credit cards; lower-cost remittances to Mexico; wealth management products; and additional products and services for business customers, such as capital markets services, international banking services, and treasury management products.

In addition, MB Financial represents that the merger would benefit current customers of Cole Taylor Bank through access to larger branch and ATM networks. The branch network available to MB Financial and Taylor Capital customers would increase from 85 and 9, respectively, to 94 branches. Customers of Cole Taylor Bank would also gain access to MB Financial's network of 121 bank-owned ATMs.

D. 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 MB Financial, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the lending operations and compliance programs of MB Financial Bank and Cole Taylor Bank, its review of examination reports, and its consultations with other agencies, the Board believes that the convenience and needs factor, including the CRA records 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."²⁵

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.²⁶ 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.²⁷

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, MB Financial would have approximately \$15.3 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be among the 75 largest U.S. financial institutions. 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 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

²⁵ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

²⁶ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

²⁷ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

risk factors. Such additional risk factors are not present in this transaction. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 50 U.S. financial institutions in terms of those metrics. For example, MB Financial's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. 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 MB Financial 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 Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective June 30, 2014.

Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Old National Bancorp
Evansville, Indiana

Order Approving the Merger of Bank Holding Companies
FRB Order No. 2014-6 (April 7, 2014)

Old National Bancorp ("Old National"), Evansville, Indiana, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")¹ to merge with Tower Financial Corporation ("Tower") and thereby indirectly acquire its subsidiary bank, Tower Bank and Trust Company ("Tower Bank"), both of Fort Wayne, Indiana. Immedi-

¹ 12 U.S.C. § 1842.

ately following the proposed merger, Tower Bank would be merged into Old National's subsidiary bank, Old National Bank, Evansville.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 69680 (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.

Old National, with consolidated assets of approximately \$9.6 billion, is the 104th largest insured depository organization in the United States, controlling approximately \$7.2 billion in deposits.⁴ Old National Bank operates in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National is the fourth largest depository institution in Indiana, controlling deposits of approximately \$5.4 billion, which represent 5.2 percent of total deposits of insured depository institutions in that state.⁵

Tower, with total consolidated assets of \$691 million, controls Tower Bank, which operates only in Indiana. Tower is the 29th largest insured depository institution in Indiana, controlling deposits of approximately \$600 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Old National would become the 101st largest depository organization in the United States, with total consolidated assets of approximately \$10.3 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Old National would have total deposits of approximately \$7.8 billion. In Indiana, Old National would remain the fourth largest depository organization, controlling deposits of approximately \$6 billion, which represent 5.7 percent of the total deposits of insured depository institutions in the 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

Old National and Tower compete directly in the Fort Wayne, Indiana 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

² The merger of Tower Bank into Old National Bank is subject to the approval of the Office of the Comptroller of the Currency ("OCC") under the Bank Merger Act.

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, nondeposit trust companies, savings and loan associations, cooperative banks, industrial banks, and savings banks.

⁶ 12 U.S.C. § 1842(c)(1).

⁷ The Fort Wayne, Indiana market is defined as Allen, DeKalb, and Whitley counties; Preble, Root, and Union townships in Adams County; Union and Jefferson townships in Wells County; Jackson and Union townships in Huntington County; Noble, Green, and Swan townships in Noble County, all in Indiana; and Carryall township in Paulding County and Hicksville township in Defiance County, both in Ohio.

insured depository institutions in the market (“market deposits”) controlled by Old National and Tower;⁸ 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

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 market in which Old National and Tower 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

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. Further, the Board has considered the

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 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), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

¹⁰ Old National operates the 24th largest depository institution in the Fort Wayne, Indiana banking market with approximately \$14 million in deposits, which represent less than 1 percent of market deposits. Tower operates the fifth largest depository institution in the market, controlling deposits of approximately \$538 million, which represent approximately 7.8 percent of market deposits. On consummation of the proposed transaction, Old National would become the fifth largest depository institution in the market, controlling deposits of approximately \$552 million, which represent 8 percent of market deposits. The HHI would increase by 3 points to 1280, and 28 competitors would remain in the market.

future prospects of the organizations involved in the proposal in light of the financial and managerial resources and proposed business plan.

The Board has considered the financial factors of the proposal. Old National and Old National Bank are well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger, structured as a cash and share exchange.¹¹ The asset quality, earnings, and liquidity of Old National Bank are consistent with approval, and Old National appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Old National, Tower, 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.

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

The Board also has considered Old National's plans for implementing the proposal. Old National is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Old National would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Old National's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. Furthermore, Old National has demonstrated a record of successfully integrating other banking organizations into its operations and risk-management systems after acquisitions.

Old National'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 Old National's anti-money-laundering policies, are consistent with approval.¹²

¹¹ Each outstanding share of Tower common stock would be exchanged for \$6.75 in cash and 1.2 shares of Old National's common stock. The anticipated aggregate cash consideration to be paid in connection with the merger is approximately \$31.6 million. Old National has the resources to fund the cash consideration portion of the transaction.

¹² On June 4, 2012, Old National Bank entered into a stipulation and consent order with the OCC relating to its Bank Secrecy Act/anti-money-laundering compliance program. Old National Bank, OCC Order No. 2012-126 (June 4, 2012). On January 14, 2014, the OCC lifted its order after verifying compliance with the order.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).¹³ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹⁴ and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹⁵

The Board has considered all the facts of record, including reports of examination of the CRA performance of Old National Bank and Tower Bank, data reported by Old National Bank and Tower Bank under the Home Mortgage Disclosure Act (“HMDA”),¹⁶ other information provided by Old National, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Old National’s fair lending record as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.¹⁷ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.¹⁸ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications 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 Old National Bank. Old National Bank was assigned an overall “outstanding” rating at its most recent CRA performance evaluation by the OCC in December 2012 (“Old National Bank Evaluation”). Old National Bank received an overall “outstanding” rating for the Lending Test and overall “high satisfactory” ratings for both the Investment and Service Tests.¹⁹ In addition to the overall “outstanding” rating that Old National Bank received, the bank received separate overall “outstanding” or “satisfactory” ratings in each multistate metropolitan area and state reviewed.²⁰

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

¹⁴ 12 U.S.C. § 2901(b).

¹⁵ 12 U.S.C. § 2903.

¹⁶ 12 U.S.C. § 2801 *et seq.*

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

¹⁸ 12 U.S.C. § 2906.

¹⁹ The evaluation period for the Old National Bank Evaluation was July 1, 2008, through December 31, 2012.

²⁰ The Old National Bank Evaluation included full-scope reviews of at least one assessment area within each state where Old National Bank had an office and of multistate metropolitan areas where Old National Bank operated branches in at least two states. The states reviewed were Illinois, Indiana, Kentucky, and Ohio, and the multistate metropolitan areas reviewed were the Evansville (Indiana-Kentucky) and Louisville (Kentucky-Indiana) metropolitan areas.

As described in the Old National Bank Evaluation, OCC examiners found that the bank's overall lending activity was excellent. The bank originated a significant majority of loans inside its assessment areas and had an excellent overall record of lending to borrowers of different income levels. Examiners noted that the bank had an excellent record of lending to home mortgage borrowers of different income levels, while its distribution of loans to businesses and farms with different revenue sizes was good. Further, Old National Bank's overall geographic distribution of loans was adequate. Specifically, the bank's geographic distribution of small loans to businesses was good, while its geographic distribution of mortgage loans and small loans to farms was adequate. In addition, examiners found no evidence of discriminatory or other illegal credit practices.

In evaluating the Investment Test, OCC examiners found that Old National Bank had an overall good level of qualified community development investments that were highly responsive to community needs. Examiners highlighted numerous CRA-qualified investments that the bank made, including donations to organizations with a community development focus. The bank also participated in various CRA-qualified investment vehicles. For the current CRA examination cycle, which began January 1, 2013, Old National has indicated that Old National Bank increased its corporate community development investment goal from \$37.5 million to \$87.5 million, an increase of 133 percent.

In evaluating the Service Test, examiners noted that branches were accessible to geographies and individuals of different income levels. Examiners also noted that Old National Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals. Further, examiners highlighted that the institution provided a relatively high level of community development services.

CRA Performance of Tower Bank. Tower Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of April 29, 2013 ("Tower Bank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.²¹ For the Lending Test, examiners concluded that Tower Bank's loan-to-deposit ratio was reasonable. Further, the majority of the bank's HMDA reportable and small business loans were made in its assessment areas, and the geographic distribution of its loans reflected reasonable penetration among borrowers of different income levels and businesses of different sizes. Examiners also noted that Tower Bank's level of community development activities represented adequate responsiveness to community credit needs in its assessment areas.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Old National Bank and Tower Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Old National Bank and Tower Bank Evaluations, assessed Old National Bank's HMDA data, and considered the comment on the application and other agencies' views on Old National Bank's record of performance under fair lending laws. The Board also considered Old National Bank's fair lending policies and procedures.

Analysis of HMDA Data and Branch Closings. The Board analyzed Old National Bank's 2012 HMDA data, the most recent publicly available, as well as preliminary 2013 HMDA

²¹ The Tower Bank Evaluation was conducted using examination procedures for small institutions with assets of less than \$1.2 billion and greater than \$296 million as of January 1, 2013. Institutions in this asset size category are referred to as intermediate small banks and are subject to CRA examinations based on performance in the following areas: loan-to-deposit ratio, lending in the assessment area, geographic distribution of lending in the assessment area, lending to borrowers of different incomes and to businesses of different sizes, responses to substantiated complaints, and community development activities.

data. The Board analyzed data related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns, as well as the subset of that data related specifically to the loan products that composed the subject of the public comment received on the proposal, including conventional home purchase loans, Federal Housing Administration ("FHA"), Farm Service Agency/Rural Housing Service ("FSA/RHS") and Veteran Affairs ("VA") home purchase loans, home improvement loans and refinance loans. The Board analyzed the bank's combined assessment areas and the specific market areas addressed in the public comment (Indianapolis, Evansville, and Fort Wayne, Indiana MSAs). 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.

The commenter expressed concerns that Old National Bank was not meeting the credit needs of minority individuals in several communities served by the bank, based on 2012 HMDA data. In particular, the commenter alleged that Old National Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans, FHA, FSA/RHS and VA home purchase loans, refinance loans and home improvement loans in the Indianapolis, Evansville, and Fort Wayne, Indiana MSAs. The commenter also asserted that Old National Bank disproportionately denied applications by Hispanic applicants in each of these MSAs, suggesting a pattern of denial rate disparities.

The Board's review confirmed the levels of lending by Old National Bank to African American and Hispanic borrowers and denial disparity ratios noted by the commenter. However, the Board's analysis of HMDA data for conventional home purchase loans, FHA, FSA/RHS and VA home purchase loans, refinance loans and home improvement loans by Old National Bank in its combined assessment areas, as well as in the Indianapolis, Evansville, and Fort Wayne MSAs individually, did not show any significant differences between Old National Bank's lending and the aggregate lending for 2012 and 2013.²²

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide 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 Old National Bank excluded or denied credit to any group on a prohibited basis.²³ Fully evaluating Old National Bank's compliance with fair lending laws and regulations 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 lending disparities persist after taking into account legitimate underwriting factors.

²² Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area.

²³ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of any 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 (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

With respect to the specific HMDA data on home purchase, home improvement and refinance loans cited by the commenter, Old National provided information reflecting nondiscriminatory reasons for individual lending decisions (*i.e.*, credit history, inadequate collateral, and debt-to-income ratio). Old National also provided the Board with detailed information on Old National 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.

The Board has consulted with the OCC regarding its evaluation of Old National Bank's compliance with fair lending laws and regulations. In its recent Old National Bank CRA Performance Evaluation, the OCC reported that it did not find evidence of discriminatory or other illegal credit practices. In addition, an OCC March 2013 consumer compliance examination and a November 2013 targeted examination of Old National Bank's risk management program for fair lending compliance did not result in any findings of discrimination relating to Old National Bank's fair lending policies and procedures or to underwriting decisions by the bank's management.

The commenter also alleged that Old National has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities.²⁴ The Board analyzed Old National Bank's current branch distribution and believes it is readily accessible to LMI geographies and individuals in the bank's assessment areas. Twenty-eight percent of Old National Bank's branches are located in LMI census tracts. According to 2010 census data, the percentage of the population in LMI geographies within Old National Bank's assessment areas was 27 percent. As such, the percentage of Old National Bank branches in LMI geographies slightly exceeds the percentage of the population in LMI geographies within the Old National Bank assessment areas.

Old National has stated that Old National Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.²⁵ The Board has reviewed Old National Bank's branch closing policy and notes that the OCC will continue to review Old National Bank's branch closing record in the course of conducting CRA performance evaluations.

Old National's Fair Lending Program. Old National 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 written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, fair lending officers serving within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Old National also has a centralized underwriting procedure, an automated application pro-

²⁴ The commenter further alleged that Old National has been closing branches for the purpose of keeping its assets slightly below \$10 billion to avoid increased regulatory burden under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Board notes that after consummation of this transaction, Old National would have more than \$10 billion in assets.

²⁵ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Federal Register* 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

cess, a second review process, a documented exception process, and a standard pricing sheet.

In addition, fair lending reviews are conducted quarterly of individual business units, and comprehensive corporate reviews are performed annually to ensure compliance with the bank's underwriting and pricing procedures and fair lending laws. The reviews utilize HMDA and non-HMDA data and analyze any fair lending complaints the institution receive. Further, the Compliance Department conducts quarterly fair lending testing and monitoring, including analysis of policies and procedures, reviews of loan and application data, monitoring of exceptions and overrides, and reviews of new products and initiatives. Old National's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

Old National Bank represents that it provides annual fair lending training to all employees involved in any aspect of the bank's credit transactions. Old National also states that it conducts ongoing monitoring and analysis of loan data, policies, and consumer complaints to ensure compliance with fair lending regulations.

C. 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. The commenter generally questioned whether the proposal would result in the public benefits that the applicant asserts.

Old National represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Old National asserts that the transaction has the potential to benefit all aspects of Tower's operations, particularly its lending functions, asset and liability management, and data processing capabilities. Old National also states that the combined organization's larger lending limit would allow Old National to better meet the lending needs of its corporate customers and more effectively compete for larger corporate customers.

Old National states that the proposal would provide customers with an expanded network of almost 170 branches in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National notes that the combined organization would provide Tower Bank's customers with an expanded and more sophisticated range of products and services than Tower Bank currently offers, including an enhanced range of consumer services and deposit accounts. Further, insurance products will be made available to Tower Bank's customers through Old National Insurance, which offers a broad array of insurance products to individuals and businesses across the United States.

D. 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 Old National, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the mortgage lending operations and compliance programs of Old National Bank and Tower Bank, and review of examination reports, the Board concludes 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 Act amended section 3 of the BHC Act to require the Board to consider “the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system.”²⁶

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.²⁷ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, 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.²⁸

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, Old National would have approximately \$10.3 billion in consolidated assets and would be the 101st largest financial institution in the United States. 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, Old National’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 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.

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

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

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.²⁹ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Old National 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 April 7, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Umpqua Holdings Corporation Portland, Oregon

Order Approving the Acquisition of a Bank Holding Company FRB Order No. 2014-2 (March 28, 2014)

Umpqua Holdings Corporation ("Umpqua"), Portland, Oregon, has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")¹ to merge with Sterling Financial Corporation ("Sterling") and thereby acquire its subsidiary bank, Sterling Savings Bank ("Sterling Bank"), both of Spokane, Washington. Immediately following the proposed acquisition, Sterling Bank would be merged into Umpqua's subsidiary bank, Umpqua Bank, Roseburg, Oregon, 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* 63476 (2013)).³ The time for

²⁹ 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, the commenter has 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.

¹ 12 U.S.C. § 1842.

² The merger of Sterling Bank into Umpqua Bank is subject to approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act. 12 U.S.C. §1828(c).

³ 12 CFR 262.3(b).

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. Umpqua, with consolidated assets of approximately \$11.6 billion, is the 96th largest insured depository organization in the United States, controlling approximately \$9.1 billion in consolidated deposits.⁴ Umpqua Bank operates in California, Nevada, Oregon, and Washington. Umpqua Bank is the fifth largest depository institution in Oregon, controlling deposits of approximately \$4.4 billion, which represent 7.5 percent of the total deposits of insured depository institutions in that state.⁵ Umpqua Bank is the 24th largest depository institution in California with approximately \$3.3 billion in deposits, the 19th largest depository institution in Washington with approximately \$1.1 billion in deposits, and the 16th largest depository institution in Nevada with approximately \$279.1 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in each of those states.

Sterling, with consolidated assets of \$10.3 billion, controls Sterling Bank, which operates in California, Idaho, Oregon, and Washington. Sterling Bank is the eighth largest depository institution in Washington, controlling deposits of approximately \$3.4 billion, which represent 2.9 percent of the total deposits of insured depository institutions in that state. Sterling Bank is the ninth largest depository institution in Oregon, controlling deposits of approximately \$1.8 billion, which represent 3.1 percent of the total deposits of insured depository institutions in that state. Sterling Bank is the 63rd largest depository institution in California, controlling deposits of approximately \$872.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state. In addition, Sterling Bank is the 11th largest depository institution in Idaho, controlling deposits of approximately \$492.6 million, which represent 2.4 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Umpqua would become the 63rd largest insured depository organization in the United States, with consolidated assets of approximately \$22.0 billion.⁶ Umpqua would have consolidated deposits of approximately \$16.2 billion. Umpqua would become the fourth largest depository organization in Oregon, controlling deposits of approximately \$6.2 billion, which represent 10.6 percent of the total amount of deposits of insured depository institutions in that state. Umpqua would become the sixth largest depository organization in Washington, controlling deposits of approximately \$4.5 billion, which represent 3.8 percent of the total amount of deposits of insured depository institutions in that state. Umpqua would become the 21st largest depository organization in California, controlling deposits of approximately \$4.1 billion, which represent less than 1 percent of the total amount of 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

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.

⁶ The pro forma asset and deposit data for the combined organization after consummation of the proposal include the assets and deposits of the six branches that Umpqua has committed to divest, which is discussed below.

transaction is prohibited under state law.⁷ 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.⁸ The Board must also take into account the record of performance of the acquiring banks under the Community Reinvestment Act (“CRA”)⁹ and applicable state community reinvestment laws.¹⁰ 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.¹¹ The Board also may not approve an application if the combined organization would control 30 percent or more of the total deposits of insured depository institutions in the target’s home state or in any state in which the acquirer and target have overlapping banking operations.¹²

For purposes of the BHC Act, the home state of Umpqua is Oregon, and Sterling Bank’s home state is Washington.¹³ Sterling Bank is also located in California, Idaho, and Oregon. Umpqua is well capitalized and well managed under applicable law. Washington has a five-year minimum age requirement,¹⁴ and Sterling 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 \$11.0 trillion. On consummation of the proposed transaction, Umpqua would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in the states in which Umpqua and Sterling have overlapping banking operations; these states are California, Oregon, and Washington. Also, the Board has taken into account Umpqua Bank’s record of performance under the CRA and determined that it does not prohibit the Board from approving the proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

Competitive Considerations

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

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 2901 *et seq.*

¹⁰ 12 U.S.C. § 1842(d)(3).

¹¹ 12 U.S.C. § 1842(d)(2)(A).

¹² 12 U.S.C. § 1842(d)(2)(B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. 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).

¹³ *See* 12 U.S.C. § 1841 (o)(4). 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. A state bank’s home state is the state in which the bank is chartered.

¹⁴ Wash. Rev. Code §§ 30.04.230, 30.04.232 (2012).

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.¹⁵ The Board has considered the competitive effects of this proposal in light of all the facts of record. Umpqua Bank and Sterling Bank compete directly in 12 banking markets in California, Oregon, and Washington.

A. Competitive Effects in Banking Markets

The Board has reviewed the competitive effects of the proposal in the banking markets in which Umpqua Bank and Sterling Bank compete. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by Umpqua and Sterling;¹⁶ 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”);¹⁷ other characteristics of the markets; and, as discussed below, commitments made by Umpqua to divest six branches.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in ten of the twelve banking markets in which Umpqua’s and Sterling’s subsidiary banks compete directly. On consummation, nine markets would remain moderately concentrated, and one market would remain highly concentrated, as measured by the HHI. The change in the HHI in the highly concentrated banking market would be small and consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. The change in the HHI in the nine moderately concentrated markets also would be consistent with Board precedent and the thresholds in the DOJ Bank Merger Guidelines. In addition, a number of competitors would remain in all ten banking markets.¹⁸

In the Coos Bay, Oregon, banking market (the “Coos Bay banking market”),¹⁹ Umpqua Bank is the largest depository institution, controlling approximately \$334.6 million in deposits, which represent approximately 39.9 percent of deposits in that market. Sterling Bank is the second largest depository institution in that market, controlling \$207.6 million in deposits, which represent approximately 24.7 percent of deposits in that market. In the Roseburg, Oregon, banking market (the “Roseburg banking market”),²⁰ Umpqua Bank is the largest depository institution, controlling approximately \$885.9 million in deposits,

¹⁵ 12 U.S.C. § 1842(c)(1).

¹⁶ Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data 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 to 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).

¹⁷ 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, 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.

¹⁸ The competitive effects of the proposal in these ten markets are described in the appendix.

¹⁹ The Coos Bay banking market is defined as Coos County and Reedsport in Douglas County, all in Oregon.

²⁰ The Roseburg banking market is defined as central Douglas County, Oregon.

which represent approximately 63.1 percent of deposits in that market. Sterling Bank is the seventh largest depository institution in the Roseburg banking market, controlling \$21.4 million in deposits, which represent approximately 1.5 percent of deposits in that market. To mitigate the potentially adverse competitive effects of the proposal in the Coos Bay and Roseburg banking markets, Umpqua has committed to divest six branches, which account for nearly all of Sterling Bank's approximately \$229.0 million in deposits in these two markets.²¹

After the divestiture, the proposal would be consistent with Board precedent and the DOJ Bank Merger Guidelines in the Coos Bay and Roseburg banking markets. Umpqua Bank would remain the largest depository institution in the Coos Bay banking market, controlling approximately \$334.6 million in deposits, which represent approximately 39.9 percent of deposits in that market. The HHI would remain unchanged at 4516. At least five other commercial banking organizations would remain in that market. Umpqua Bank would remain the largest depository institution in the Roseburg banking market, controlling approximately \$885.9 million in deposits, which represent approximately 63.1 percent of deposits in that market. The HHI would remain unchanged at 4461. At least six other commercial banking organizations would remain in that market.

B. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal with the proposed divestiture of branches as discussed above 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 12 banking markets in which Umpqua and Sterling 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 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 U.S. banking or financial system.

²¹ As a condition to consummation of the proposed merger, Umpqua has committed that it will execute an agreement to sell within 180 days of consummating the proposed merger the six Sterling Bank branches located in the Coos Bay and Roseburg banking markets to one or two purchasers determined by the Board to be competitively suitable. In addition, Umpqua has provided a similar commitment to the DOJ. If the proposed divestiture is not completed within the 180-day period, Umpqua commits to transfer the unsold branches to an independent trustee who will be instructed to sell them to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. Both the trustee and any alternate purchaser must be deemed acceptable to the Board. See *Bank America Corporation*, 78 *Federal Reserve Bulletin* 338 (1992); *United New Mexico Financial Corporation*, 77 *Federal Reserve Bulletin* 484 (1991).

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 confidential supervisory and examination information from various U.S. banking supervisors of the institutions involved, publicly reported and other financial information, information provided by Umpqua, 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. Umpqua and Umpqua 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.²² Umpqua is in satisfactory financial condition, and the asset quality, earnings, and liquidity of both Umpqua Bank and Sterling 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 Umpqua, Sterling, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money laundering laws.

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

The Board has also considered Umpqua's plans for implementing the proposal. Umpqua is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Umpqua would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Umpqua's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner, and Umpqua plans to integrate Sterling Bank's existing management and personnel in a manner that augments Umpqua's management.

²² As part of the proposed transaction, each share of Sterling common stock would be canceled and converted into a right to receive cash and Umpqua common stock based on an exchange ratio.

Umpqua'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 Umpqua's anti-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 CRA.²³ 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,²⁴ 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.²⁵

The Board has considered all the facts of record, including reports of examination of the CRA performance of Umpqua Bank and Sterling Bank, data reported by Umpqua Bank and Sterling Bank under the Home Mortgage Disclosure Act ("HMDA"),²⁶ other information provided by Umpqua, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of Umpqua Bank's and Sterling Bank's CRA performance and fair lending records, as reflected in 2012 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.²⁷ 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.²⁸ 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 Umpqua Bank. Umpqua Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of July 15, 2013 ("Umpqua Bank Evaluation").²⁹ Examiners noted that Umpqua Bank had a good record of meeting the credit needs of its assessment areas and a relatively high level of community

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

²⁴ 12 U.S.C. § 2901(b).

²⁵ 12 U.S.C. § 2903.

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642 at 11665 (2010).

²⁸ 12 U.S.C. § 2906.

²⁹ The Umpqua Bank Evaluation reviewed home mortgage, small business, and community development lending data from January 1, 2010, through December 31, 2012. The evaluation also covered qualified community investments and services during the same period. All lending activities that occurred in 2010 and 2011 were

development loans. Examiners identified no evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs. Umpqua Bank received a “high satisfactory” rating on both the Lending and Service Tests and a “low satisfactory” rating on the Investment Test.³⁰

As described in the Umpqua Bank Evaluation, FDIC examiners found that the bank’s overall lending reflected good responsiveness to the credit needs of the communities it serves.³¹ The bank had a good record of lending to businesses of different sizes, especially smaller-sized businesses,³² and an adequate record of lending to retail customers, including residential mortgage borrowers, of different income levels. Examiners noted that, consistent with safe and sound banking practices, the bank was adequately serving the credit needs of low-income individuals, very small businesses, and the most economically disadvantaged portions of its combined assessment areas. Examiners also noted that Umpqua Bank used flexible lending programs in serving the credit needs of the communities it serves³³ and made 49 community development loans totaling \$153.9 million during the evaluation period, which represented an approximately \$37 million increase in community development lending from the previous evaluation.

With respect to the Investment Test, FDIC examiners found that Umpqua Bank had an adequate level of qualified community development investments and grants and occasionally used innovative and complex investments to support community development initiatives given current economic conditions. In particular, FDIC examiners noted that, although Umpqua Bank’s current level of community development investments and grants had doubled in size as a percentage of the bank’s total assets and total investments since the previous evaluation, the level of investments remained low at 0.7 percent of total assets and 3.4 percent of total investments as of March 31, 2013.³⁴ The dollar volume of investments, viewed in light of Umpqua Bank’s capacity, the opportunity for making qualified investments in its assessment areas, and the activities of peer institutions, was a key driver in the “low satisfactory” rating assigned to the bank on the Investment Test.

compared to the 2000 U.S. Census, while lending activities that occurred in 2012 were compared to the 2010 U.S. Census. The Umpqua Bank Evaluation was conducted using the Large Bank CRA Examination Procedures.

³⁰ The Umpqua Bank Evaluation included a full-scope review of five assessment areas: Oregon Non-Metropolitan Statistical Area (“MSA”) Assessment Area; Portland-Vancouver-Hillsboro Multi-State MSA (“Portland MSA”); Sacramento-Arden-Arcade-Roseville, California MSA; Seattle-Bellevue-Everett, Washington Metropolitan Division; and Reno-Sparks, Nevada MSA. A limited-scope review was performed in the Bend, Corvallis, Eugene-Springfield, Medford, and Salem MSAs in Oregon; the Chico, Modesto, Napa, Redding, Santa Rosa-Petaluma, Stockton, Vallejo-Fairfield MSAs in California; the Oakland-Fremont-Hayward, California Metropolitan Division; the California Non-MSA Assessment Area; and the Tacoma, Washington Metropolitan Division. Examiners placed greater weight on the bank’s performance in Oregon, the Portland-Vancouver-Hillsboro Multi-State MSA, and California due to the concentration of loan production and branch infrastructure in these areas.

³¹ A substantial majority of the bank’s loans were made within its assessment areas.

³² FDIC examiners’ conclusions with respect to small businesses were based primarily on Umpqua Bank’s rate of lending to businesses with gross annual revenues (“GARs”) of \$1 million or less compared to other small businesses, as well as on the business demographics of the bank’s assessment areas.

³³ For example, the bank provided 3,644 loans totaling \$761.8 million under the Home Affordable Refinance Program; 1,598 loans totaling \$308.1 million under Federal Housing Administration (“FHA”) loan programs; and 937 loans totaling \$211.8 million under Department of Veterans Affairs (“VA”) loan programs. These programs incorporate flexible features that assist with credit needs identified by community contacts (e.g., the FHA and VA programs offer flexible underwriting terms such as low- or no-down payment requirements, and many borrowers under those programs are LMI individuals and families).

³⁴ In connection with the proposed transaction, Umpqua has informed the Board that the company will establish a charitable foundation, to which Umpqua will make an initial contribution of at least \$10 million, for the benefit of the communities served by the combined organization. The foundation will primarily focus on youth development and education, the arts, and community development, including affordable housing and financial literacy.

In evaluating the Service Test, FDIC examiners noted that the weakest aspects of Umpqua Bank's performance were the reasonableness of services and business hours and that Umpqua Bank's branch distribution lagged the market in penetration in LMI geographies, especially penetration of moderate-income geographies. Nonetheless, examiners assigned Umpqua Bank a rating of "high satisfactory," noting that the bank's community development services carried the most weight in determining the overall rating under the Service Test. In this respect, examiners noted that Umpqua Bank is a leader in providing community development services. For example, the bank provided a total of 21,543 hours of qualified community development services during the assessment period; this represented a substantial increase from the previous evaluation in which 260 employees provided 2,477 hours of qualified community development services. Examiners also concluded that in most states in which the bank operates accessibility to the bank's delivery systems was quite good and was accessible to essentially all portions of the bank's assessment areas.³⁵ Moreover, examiners noted that access to the delivery systems, especially in LMI geographies and by LMI individuals, has not been adversely affected by the bank's closure and opening of branches.

CRA Performance of Sterling Bank. Sterling Bank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of October 11, 2011 ("Sterling Bank Evaluation"), with ratings of "high satisfactory" on the Lending Test and "low satisfactory" on the Investment and Service Tests.³⁶ Examiners noted that Sterling Bank's lending reflected good responsiveness to community credit needs and that there was excellent distribution of loans among customers of different income levels and businesses of different sizes. Examiners also noted, however, that the bank had only adequate levels of qualified community development investments and services.

For the Lending Test, examiners found that the bank's distribution of mortgage loans reflected excellent penetration among borrowers of differing income levels. Examiners noted that in 2010, the bank exceeded the aggregate of all lenders in the percentage of loans to low-income borrowers (7.2 percent compared to the aggregate's 5.6 percent) and to moderate-income borrowers (21.8 percent compared to the aggregate's 16.3 percent). In 2011, Sterling Bank's lending to moderate-income borrowers increased to 23.1 percent of its total lending, which exceeded the percentage of total families represented by moderate-income borrowers. Examiners also found that the bank's small business lending reflected good penetration among businesses of different revenue sizes. In 2010, 55.0 percent of the bank's small business lending was to businesses with GARs of \$1 million or less, significantly exceeding the aggregate's percentage of 41.3 percent. Overall, examiners found that the bank exhibited a good record of serving the credit needs of the most economically disadvantaged geographies of its assessment areas, low-income individuals, and very small businesses.

For the Investment and Service Tests, examiners found the bank's levels of qualified investments, donations, and services provided were adequate. The bank reported 117 qualified investments and donations totaling \$57.9 million, an increase of \$17.9 million when compared to Sterling Bank's previous examination. Examiners found that the bank occasionally utilizes innovative and complex investments to support community development initiatives. Examiners also found that the bank exhibited adequate responsiveness to credit and community economic development needs. In addition, examiners found that delivery systems were accessible to essentially all portions of the bank's assessment areas.

³⁵ Although Umpqua Bank's performance under the Service Test was weakest in Nevada, examiners noted that the bank only began operating in that state following an acquisition in 2010.

³⁶ The evaluation reflects Sterling Bank's performance in 2010 and the first half of 2011.

2. Fair Lending Record, HMDA, and Small Business Lending Analysis, and Public Comments on the Application

The Board has considered the records of Umpqua Bank and Sterling Bank in complying with fair-lending and other consumer-protection laws. As part of this consideration, the Board reviewed the Umpqua Bank and Sterling Bank Evaluations and Umpqua Bank's fair lending policies and procedures. The Board also considered other agencies' views on Umpqua Bank's record of performance under fair lending laws. In addition, the Board has taken into account the comments on the application.

Several commenters expressed concerns that Umpqua Bank and Sterling Bank are not meeting the credit needs of minority and LMI individuals in the communities served by the banks based on 2012 HMDA data. In particular, the commenters alleged that Umpqua Bank and Sterling Bank made disproportionately fewer conventional residential mortgage loans and refinance loans to African American and Hispanic borrowers than to white borrowers, and denied more applications for conventional home purchase loans by African American and Hispanic borrowers compared to white borrowers, in the Spokane, Washington MSA ("Spokane MSA") and Portland MSA.³⁷ Similarly, commenters asserted that both institutions made fewer home loans to Asians compared to the aggregate of all lenders in the Seattle-Tacoma-Bellevue, Washington MSA ("Seattle MSA") and Portland MSA.³⁸ Commenters also alleged that Umpqua Bank and Sterling Bank made a smaller percentage of home loans to LMI borrowers compared to the aggregate in the Portland, Seattle, and Eugene-Springfield, Oregon ("Eugene") MSAs.³⁹ One commenter contended that, while it did not believe that Umpqua Bank is consciously discriminating, the bank's business lending to African American and Hispanic borrowers and mortgage lending to minority and LMI borrowers in certain California markets showed a need for improvement.⁴⁰ Commenters also expressed concerns with respect to Umpqua Bank's lower percentage of deposits from, and branches in, LMI areas of Portland compared to the aggregate.

The Board has reviewed HMDA data for 2010 through 2012 for both Umpqua Bank and Sterling Bank, the most recent publicly available data. The Board analyzed data related to all HMDA-reportable loans to develop a view of overall lending patterns by Umpqua Bank and Sterling Bank. The Board generally analyzed each bank's statewide assessment areas, combined statewide assessment areas, and the specific market areas addressed in the public comments (the Portland, Eugene, Seattle, and Spokane MSAs, and Umpqua Bank's Cali-

³⁷ For example, commenters alleged that, in the Spokane MSA, Umpqua Bank made two conventional mortgage loans to African Americans and one to Hispanics, compared to 101 mortgage loans to whites, and that the bank denied one in four applications for mortgage loans from Hispanics, compared to only one in every six applications by whites. They further alleged that, in the Portland MSA, Umpqua Bank made eight refinance loans to African Americans and nine to Hispanics, compared to 1,052 refinance loans to whites.

³⁸ Commenters alleged that, in the Seattle MSA, Umpqua Bank and Sterling Bank made 7.7 and 8.3 percent of their respective home loans to Asians compared to 13.3 percent for the aggregate. They also pointed out that Umpqua Bank made 4.1 percent, and Sterling Bank made 4.3 percent, of their mortgage loans to Asians, compared to 6.7 percent for the aggregate in the Portland MSA.

³⁹ For example, commenters alleged that Umpqua Bank extended fewer residential mortgage loans to LMI borrowers compared to the aggregate in the Portland MSA (22.5 percent to LMI borrowers compared to 25.9 percent for the aggregate), in the Seattle MSA (18.3 percent to LMI borrowers compared to 25.6 percent for the aggregate), and in the Eugene MSA (21 percent to LMI borrowers compared to 26.1 percent for the aggregate).

⁴⁰ For example, the commenter claimed that, in the nonmetropolitan areas of the bank's California operations, Umpqua Bank had an overall low number of mortgage applications from minority and LMI borrowers, with a denial rate for Hispanics that is roughly double other demographics, and that the bank did not make any loans to African American businesses and only one loan to Hispanic businesses in 2011 and 2012.

ifornia Non-MSA Assessment Area).⁴¹ In response to a comment regarding a decline in Umpqua Bank's Small Business Administration lending in its nonmetropolitan California markets, the Board also reviewed Umpqua Bank's small business lending record from 2010 through 2012 for the bank's California Non-MSA Assessment Area and its statewide assessment areas.

Analysis of Lending to LMI Borrowers and Minorities. The Board's review confirmed the commenters' assertions that Umpqua Bank's volume of loans to LMI individuals in the Portland, Eugene, and Seattle MSAs lagged the average for all lenders in those markets. For example, 2012 data showed that Umpqua Bank's percentage of applications from and loans to LMI borrowers in the Portland MSA lagged the aggregate by 4.8 percent (21.6 percent compared to 26.4 percent) and 3.4 percent (21.0 percent compared to 24.4 percent), respectively.

However, the Interagency CRA Examination Procedures for large institutions require examiners to consider several factors, including the percentage of loans to both LMI individuals and LMI census tracts, when reviewing an institution's performance under the Lending Test.⁴² The Board's review of 2012 data showed that the bank's percentage of applications from and loans to LMI tracts approximated or slightly exceeded those of the aggregate in the Portland MSA. The Board found a similar pattern in the Eugene and Seattle MSAs. Moreover, the data reviewed by the Board showed that a significant majority of both banks' mortgage applications in 2012 were for refinancing loans, most of which were from white applicants. Although refinancings increased the volume of applications and originations to LMI tracts and borrowers, it also substantially increased the volume of applications and originations to middle- and upper-income tracts and borrowers, which drove down the banks' percentages for LMI borrowers and tracts. This trend is consistent with 2012 data for the aggregate in all markets reviewed by the Board.

The data reviewed by the Board also indicated that Umpqua Bank lagged the aggregate in the percentage of loans to Asian borrowers in the Portland (2.8 percent compared to 5.6 percent) and Seattle (7.5 percent compared to 12.9 percent) MSAs, and in the percentage of applications from and loans to African American and Hispanic borrowers in the bank's Oregon statewide assessment area.⁴³ However, the data also revealed that Umpqua Bank's denial rates for such borrowers are relatively low as compared with the aggregate (for example, the bank's 2012 denial rate for Asian mortgage applicants was 13.4 percent in Portland and 12.3 percent in Seattle, compared to 17.2 percent and 15.9 percent for the aggregate, respectively). This indicates that the low volume of applications the bank receives from African Americans, Asians, and Hispanics is a key factor in the bank's low volume of lending to such borrowers.⁴⁴

⁴¹ Umpqua Bank designates only portions of the Portland and Seattle MSAs in the bank's assessment areas. The Board's review focused on those portions of these MSAs for which the bank has CRA responsibility. In this respect, the data reviewed by the Board differ somewhat from that relied on by the commenters, which cited Umpqua Bank's lending record compared with the entire Portland and Seattle MSAs.

⁴² Examiners also consider the number and amount of loans made in the institution's assessment area, its record of community development lending, and its use of innovative or flexible lending practices. For example, the Umpqua Bank Evaluation noted that the bank has promoted the use of down-payment assistance programs and has worked with a number of agencies such as the Federal Home Loan Bank to assist low-income borrowers obtain grants and low-interest loans to meet their down-payment needs to purchase homes. See 12 CFR 345.22 (discussing the scope of the FDIC's evaluation of the Lending Test for nonmember banks such as Umpqua Bank).

⁴³ Similarly, Sterling Bank's lending to African American and Hispanic borrowers, except for the Spokane MSA, lagged the aggregate in all markets under review in 2012.

⁴⁴ Umpqua's analysis indicated that Umpqua Bank's 2012 overall minority denial disparity ratio was 1.4:1 compared to the aggregate's ratio of 1.33:1.

In response to the commenters' concerns with respect to the low volume of mortgage loans to African American, Asian, and Hispanic individuals, Umpqua urges that consideration should be given to the overall low percentage these demographics represent in its markets.⁴⁵ Umpqua also asserts that its lending patterns to African American and Hispanic borrowers correlate closely to the lower credit scores and higher loan-to-value and debt-to-income ratios of minority applicants to Umpqua. Moreover, Umpqua argued that its denial rates for Asian borrowers are equal to or lower than those of the aggregate and that differences in lending patterns for these borrowers reflect a competitive mortgage lending market rather than discriminatory lending practices.⁴⁶ In addition, Umpqua argued that applications from African American and Hispanic borrowers in the Portland MSA, as well as from Asian borrowers in the Corvallis, Eugene, Portland, Sacramento, Seattle, and Tacoma MSAs generally increased from 2011 to 2012, in part due to the bank's increased community engagement efforts.

Analysis of Small Business Lending. The Board also reviewed Umpqua Bank's small business lending. In the California Non-MSA Assessment Area, the Board's review showed that the bank's percentage of small business loans to LMI tracts exceeded the aggregate in both 2010 and 2011. In 2012, the bank's percentage of loans to LMI tracts was 12.3 percent, which slightly lagged the aggregate's 14.0 percent. However, Umpqua Bank's percentage of loans in the California Non-MSA Assessment Area to predominantly minority census tracts generally exceeded the aggregate in 2010, 2011, and 2012.

The Board also reviewed Umpqua Bank's small business lending record in the bank's Oregon, California, and Washington statewide assessment areas. Although the bank's percentage of loans in predominantly minority tracts lagged the aggregate in its Oregon and California assessment areas, it generally approximated the aggregate in its Washington assessment area. The bank's percentage of small business loans to LMI tracts generally exceeded the aggregate for each of the three statewide assessment areas. In addition, the Board notes that in the Umpqua Bank Evaluation, examiners found Umpqua Bank's overall distribution of loans to small businesses to be good, compared to the business demographics of the markets reviewed.

Other Fair Lending Considerations. The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although 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 Umpqua Bank or Sterling Bank have excluded or denied credit to any group on a prohibited basis.⁴⁷ In evaluating Umpqua Bank's compliance with fair lending laws and regulations overall, the Board has considered other information, including the bank's loan application and underwriting policies and procedures and examination

⁴⁵ For example, 2010 census data show that, in Umpqua Bank's Oregon statewide assessment area, Asian, African American, and Hispanic borrowers accounted for 4.98 percent, 2.51 percent, and 11.45 percent of the population, respectively.

⁴⁶ In particular, Umpqua noted, and FDIC staff confirmed, that Asian-owned banks and other lenders attract a significant portion of the applications from Asian borrowers in Washington, Oregon, and California.

⁴⁷ 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.

reports that provide on-site evaluations of compliance by the bank with fair lending laws and regulations.

The Board has consulted with Umpqua Bank's primary federal regulators, the FDIC and the Consumer Financial Protection Bureau, regarding their evaluations of the bank's compliance with fair lending laws and regulations overall. Based on its recent review, the FDIC reported that it did not find evidence that Umpqua Bank engaged in discriminatory conduct in making its credit decisions and expressed no concern regarding the adequacy of Umpqua Bank's fair lending policies and procedures.

In response to the commenters' concerns about the racial and income disparities in the bank's lending practices, the FDIC conducted a review to determine whether Umpqua Bank has been making credit decisions fairly, based on the creditworthiness of the borrower.⁴⁸ The FDIC's review confirmed gaps in the bank's lending, some of which were noted by the commenters.⁴⁹ The analysis, however, did not reveal any indications of disparate treatment based on racial characteristics of the applicants. The FDIC's review also identified some gaps in distribution in predominantly minority census tracts, but after further investigation, including mapping, policy review, interviews with management, and marketing review, no evidence of redlining was apparent. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of Sterling Bank into Umpqua Bank and has approved the merger under the Bank Merger Act.⁵⁰

As noted above, the Board's review indicates that low volume of loan applications is a key factor in Umpqua Bank's relatively low volume of lending to LMI individuals, to African American, Asian, and Hispanic individuals, and to small businesses in predominantly minority census tracts, in certain of its assessment areas, as compared with the aggregate. To that end, Umpqua has committed that, within 60 days following consummation of the merger with Sterling, Umpqua will develop a plan consistent with the combined organization's size and complexity, to assist the combined organization in continuing to help meet the credit needs of its communities, in accordance with the CRA. The plan will establish specific performance goals and measures to assist the combined organization in helping to meet community credit needs, including through outreach and marketing of its products and services to LMI and underserved individuals and communities and by identifying opportunities for community development-related investments in its communities.

Umpqua Bank's Fair Lending Program. The Board has reviewed the policies and procedures that Umpqua has instituted 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 an annual review of fair lending policies to ensure effective controls and compliance with laws and regulations, a system for determining risk and investigation of fair lending violations, annual training to keep applicable employees informed of fair lending risk and related regulatory requirements, an automated underwriting system to limit the risk of individual decision making on loan approvals, and a secondary review of all proposed loan denials and counteroffers to ensure compliance. In addition, Umpqua Bank has established a system for tracking and reviewing canceled, withdrawn, and denied applications by individual business units, which report findings from these reviews to

⁴⁸ The review was conducted as part of the FDIC's evaluation of the application by Umpqua Bank to merge with Sterling Bank.

⁴⁹ The commenters noted numerous gaps in the bank's lending record that the FDIC could not substantiate.

⁵⁰ The Board notes that the State of Oregon has approved the merger of Umpqua Bank and Sterling Bank. Letter from Jacob P. Mundaden, Program Manager – Banks & Trust Companies, Oregon Department of Consumer and Business Services, to Patricia A. Robinson, Wachtell, Lipton, Rosen & Katz (Jan. 24, 2014).

management on a weekly basis. Umpqua plans to leverage the strengths of its and Sterling's compliance programs to develop an enhanced compliance management system, and to increase the number of dedicated compliance and CRA staff, for the combined organization on consummation of the transaction. Umpqua has stated that Sterling Bank has a robust compliance testing program embedded in key production units of the bank that includes systematic reporting of testing results to management each month. Umpqua plans to integrate Sterling Bank's testing program into Umpqua Bank's Compliance Monitoring Program to address the expected increased volume in transactions and potentially new risks associated with offering different or new products and services.

3. Additional Information on Convenience and Needs 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.⁵¹ Umpqua represents that the proposal would create a regional institution of size, with almost 375 branches across five states, that will increase the competitiveness of, and result in cost savings for, the combined organization. The combined organization will use Umpqua's branch and operating strategy and combine the business-line strengths of both companies. Umpqua 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 allow for enhanced levels of products and services.

Umpqua also states that the proposal would offer customers convenience through an expanded branch network and a broader range of financial products. Umpqua Bank customers will benefit from Sterling Bank's strong multifamily lending program, and Sterling Bank's business customers will have access to Umpqua Bank's commercial-lending and equipment-leasing platforms. In addition, current customers of Sterling Bank would benefit from the international trade finance products and interest rate swap products offered by Umpqua Bank. Umpqua also asserted that the proposal would strengthen the operations of the combined organization because of the complementary aspects of the organizations' businesses, including geographic coverage and compatibility of their management and operating styles, and the combined experience and expertise of the management and employees of the two organizations.

Contrary to the commenter's assertion, Umpqua represents that it has not made any decisions with respect to the closure or consolidation of branches, with the exception of the six branches to be divested, as discussed above. Umpqua Bank further represents that it maintains a branch-closing policy and completes a full CRA and fair lending impact analysis prior to closing or consolidating any branches. The FDIC determined that Umpqua Bank's branch closing policy is in compliance with regulatory requirements.

⁵¹ Two commenters alleged that the proposal would not provide a clear or significant public benefit. The commenters specifically urged that, to demonstrate satisfactorily the public benefits of the proposal, Umpqua should, among other things, commit to a plan to open branches in underserved areas, partner with local community groups, and increase lending to LMI and minority borrowers to the industry aggregate levels. In addition, a commenter alleged that the proposal would lead to branch closures by the combined organization that would further restrict access to banking services in LMI communities. A commenter also suggested that a conflict of interest exists because a former Secretary of the Treasury will be affiliated with a shareholder of the combined organization. No evidence of a conflict was presented, and the Board expects that the parties involved will abide by all laws governing conflicts of interest.

4. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Umpqua, confidential supervisory information, and public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of Umpqua Bank's and Sterling Bank's lending operations and compliance programs, review of examination reports, and consultations with other agencies, 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.

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.”⁵²

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.⁵³ 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.⁵⁴

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, Umpqua would have approximately \$21.3 billion in consolidated assets and by any of a number of alternative measures of firm size, Umpqua would be between the 50th and 75th largest U.S. insured depository organization. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets 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 50 U.S. financial institutions in terms of those metrics. For example, Umpqua's intrafinancial assets and liabilities would constitute a neg-

⁵² Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

⁵³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁵⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

ligible 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, the Board concludes that 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.⁵⁵ 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 Umpqua 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 Federal Reserve Bank of San Francisco, acting under delegated authority.

By order of the Board of Governors, effective March 28, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁵⁵ 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. 12CFR 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 represent 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 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 would otherwise 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.

Appendix

Umpqua/Sterling banking markets in California, Oregon, and Washington consistent with Board precedent and DOJ Bank Merger Guidelines						
Status	Rank	Amount of deposits	Market deposit shares (percent)	Resulting HHI	Change in HHI	Remaining number of competitors
Crescent City, California–Oregon —includes Central Del Norte County, California, and southern Curry County, Oregon.						
Umpqua pre-consummation	3	\$57.5M	14.8	1792	204	6
Sterling	7	\$26.7M	6.9	1792	204	6
Umpqua post-consummation	2	\$84.1M	21.7	1792	204	6
Santa Rosa, California — includes the Santa Rosa metropolitan area in Sonoma County.						
Umpqua pre-consummation	16	\$21.2M	0.3	1319	4	17
Sterling	6	\$479.4M	6.4	1319	4	17
Umpqua post-consummation	6	\$500.6M	6.7	1319	4	17
San Francisco–Oakland–San Jose, California — includes the San Francisco–Oakland–San Jose metropolitan area in Alameda, Contra Costa, Marin, San Francisco, San Mateo, and Santa Clara counties; the southern portions of Sonoma and Solano Counties; the northern portion of San Benito County; and the southern edge of Napa County.						
Umpqua pre-consummation	32	\$362.5M	0.1	1873	0	85
Sterling	39	\$246.5M	0.1	1873	0	85
Umpqua post-consummation	26	\$609.0M	0.2	1873	0	85
Deschutes County, Oregon —includes Deschutes County.						
Umpqua pre-consummation	8	\$110.5M	4.5	1455	24	11
Sterling	10	\$62.5M	2.6	1455	24	11
Umpqua post-consummation	6	\$173.0M	7.1	1455	24	11
Eugene, Oregon —includes the Eugene metropolitan area in Lane and Linn counties.						
Umpqua pre-consummation	2	\$646.9M	16.7	1276	17	12
Sterling	14	\$19.3M	0.5	1276	17	12
Umpqua post-consummation	2	\$666.2M	17.2	1276	17	12
Grants Pass, Oregon — includes eastern Josephine County, western Jackson County, and Glendale in Douglas County.						
Umpqua pre-consummation	1	\$246.3M	21.3	1281	141	10
Sterling	11	\$38.3M	3.3	1281	141	10
Umpqua post-consummation	1	\$284.5M	24.6	1281	141	10
Medford, Oregon —includes the Medford metropolitan area in Jackson County.						
Umpqua pre-consummation	3	\$370.6M	13.4	1292	131	12
Sterling	10	\$134.1M	4.9	1292	131	12
Umpqua post-consummation	2	\$504.7M	18.3	1292	131	12
Portland, Oregon–Washington —includes the Portland metropolitan area in Clackamas, Columbia, Marion, Multnomah, Washington, and Yamhill counties, Oregon, and Clark County, Washington.						
Umpqua pre-consummation	6	\$1.6B	4.3	1500	22	37
Sterling	8	\$957.4M	2.6	1500	22	37
Umpqua post-consummation	5	\$2.5B	6.8	1500	22	37
Salem, Oregon —includes the Salem metropolitan area in Marion and Polk counties.						
Umpqua pre-consummation	6	\$270.5M	6.9	1213	26	14
Sterling	13	\$74.2M	1.9	1213	26	14
Umpqua post-consummation	5	\$344.7M	8.8	1213	26	14
Seattle, Washington —includes the Seattle metropolitan area in King, Pierce, and Snohomish counties; the southeastern portion of Island County; and Bainbridge Island in Kitsap County.						
Umpqua pre-consummation	15	\$775.2M	1	1297	2	57
Sterling	11	\$867.6M	1.1	1297	2	57
Umpqua post-consummation	9	\$1.6B	2.1	1297	2	57

Note: Data are as of June 30, 2013. All amounts of deposits are unweighted. All rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.

Order Issued Under Section 4 of the Bank Holding Company Act

PacWest Bancorp
Los Angeles, California

CapGen Capital Group II LP
New York, New York

CapGen Capital Group II LLC
New York, New York

Order Approving the Acquisition of an Industrial Bank and Nonbanking Subsidiaries *FRB Order No. 2014-3 (April 1, 2014)*

PacWest Bancorp (“PacWest”), Los Angeles, California, a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”), and its controlling shareholders, CapGen Capital Group II LP (“CapGen LP”) and CapGen Capital Group II LLC (“CapGen LLC,” and collectively with PacWest and CapGen LP, “Notificants”), both of New York, New York,¹ have requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act and section 225.24 of the Board’s Regulation Y² to acquire CapitalSource Inc. (“CapitalSource”) and thereby indirectly acquire its subsidiary industrial bank, CapitalSource Bank (“CSB”), both of Los Angeles. Immediately following the proposed acquisition, CSB would be merged into PacWest’s subsidiary bank, Pacific Western Bank (“PWB”), Los Angeles.³ In addition, Notificants have requested approval to acquire other nonbanking subsidiaries of CapitalSource and thereby engage in extending credit and servicing loans in accordance with section 225.28(b)(1) of the Board’s Regulation Y⁴ and in leasing personal property in accordance with section 225.28(b)(3) of the Board’s Regulation Y.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Fed. Reg.* 54,648 (Sept. 5, 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.

PacWest, with total consolidated assets of approximately \$6.5 billion, is the 144th largest depository organization in the United States, controlling approximately \$5.4 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁶ PWB operates branches only in California. PWB is the 20th largest depository institution in California, controlling deposits of \$5.6 billion, which represent less than 1 percent of the total deposits of insured depository

¹ CapGen LP and CapGen LLC are bank holding companies under the BHC Act because they control PacWest. The only activity of CapGen LP is to own shares of PacWest common stock. CapGen LLC is the sole general partner of CapGen LP.

² 12 U.S.C. §§ 1843(c)(8) and (j); 12 CFR 225.24.

³ The merger of CSB into PWB is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) under the Federal Deposit Insurance Act. The FDIC approved the merger on March 6, 2014.

⁴ 12 CFR 225.28(b)(1).

⁵ 12 CFR 225.28(b)(3).

⁶ Asset and nationwide deposit ranking data are as of December 31, 2013. In general, Board orders on banking applications and notifications define insured depository institutions to include commercial banks, savings banks, and savings associations for the purposes of asset and deposit ranking data. *See, e.g., Investors Bancorp, MHC*, FRB Order No. 2013-16 at 2 (December 23, 2013). In this case, because CSB is an industrial bank, in this context, insured depository institutions also include industrial banks and industrial loan companies.

institutions in that state.⁷ PWB also engages in asset-based lending in various states in the western United States and in equipment leasing nationwide.

CapitalSource, with total consolidated assets of approximately \$8.9 billion, controls CSB, its only insured depository institution. As an industrial bank, CSB does not accept demand deposits. Rather, CSB offers a limited set of deposit products through retail branches in southern and central California. CSB also operates loan origination offices throughout the country and engages primarily in commercial lending. In addition to owning CSB, CapitalSource also engages in a limited amount of commercial lending and equipment leasing through nonbank subsidiaries.⁸

On consummation of the proposal, PacWest would become the 81st largest depository organization in the United States, with total consolidated assets of approximately \$15.4 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. PacWest would control total consolidated deposits of approximately \$11.6 billion. In California, PacWest would become the 14th largest depository organization, controlling deposits of approximately \$11.6 billion, which represent 1.14 percent of the total deposits of insured depository institutions in that state.

Factors Governing Board Review of the Transaction

The Board previously has determined by regulation that the operation of an industrial bank by a bank holding company and other nonbanking activities for which PacWest has requested approval are closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁹ PacWest has committed that all the activities of CapitalSource and the other nonbanking subsidiaries of CapitalSource that it proposes to acquire engage in activities that will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.¹⁰

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of CapitalSource and its nonbanking subsidiaries “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 interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”¹¹ 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

⁷ State deposit and asset data are as of June 30, 2013.

⁸ Through nonbank subsidiaries, Capital Source satisfies existing loan commitments made prior to the formation of CSB in 2008. Excluding loans held by CSB, CapitalSource had a total outstanding loan principal balance of approximately \$141 million as of September 30, 2013.

⁹ 12 CFR 225.28(b)(1), (3), and (4).

¹⁰ CapitalSource controls certain assets that are not permissible for a bank holding company to control under section 4 of the BHC Act and Regulation Y. CapitalSource acquired these assets in satisfaction of debts previously contracted. PacWest has committed that it will divest all such assets not later than two years from the date that the proposed transaction is consummated, consistent with section 4(c)(2) of the BHC Act. 12 U.S.C. § 1843(c)(2).

¹¹ 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 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.

benefits of the proposal.¹² In acting on a notice to acquire an industrial bank, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).¹³

Competitive Considerations

As part of the Board’s consideration of the factors under section 4 of the BHC Act, the Board has considered the competitive effects of Notificants’ acquisition of CapitalSource and its nonbanking subsidiaries in light of all the facts of record. Notificants and CapitalSource both engage in commercial lending,¹⁴ commercial real estate financing, and equipment leasing. The Board previously has determined that the geographic markets for commercial lending, commercial real estate financing, and equipment leasing are either regional or national in scope.¹⁵ The record in this case indicates that there are numerous competitors that would continue to engage in these businesses on consummation. Further, the markets for these services would remain unconcentrated, and Notificants’ and CapitalSource’s levels of participation are relatively small.

In addition, Notificants and CapitalSource both engage in community development activities. The Board previously has determined that the geographic market for community development activities is local in scope.¹⁶ The market for community development activities is unconcentrated, and there are numerous market participants who engage in these activities.

The Department of Justice has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the transaction would not be likely to have a significantly adverse effect on competition in any relevant market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposed transaction would not have a significantly adverse effect on competition or on the concentration of resources in any relevant market. Accordingly, the Board has determined that competitive considerations weigh in favor of approval.

¹² See 12 CFR 225.26; see, e.g., *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012) (“Capital One Order”); *Bank of America Corporation/Countrywide*, 94 *Federal Reserve Bulletin* C81 (2008) (“Bank of America Order”); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

¹³ 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 Notificants and CSB is California 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 Notificants controlling less than 1 percent of the deposits of U.S. insured depository institutions.

¹⁴ Notificants engage in commercial lending to businesses of various sizes. CapitalSource engages in commercial lending primarily to medium and large businesses.

¹⁵ See, e.g., *M&T Bank Corporation*, 89 *Federal Reserve Bulletin* 222 (2003) (commercial real estate lending and equipment leasing); *Deutsche Bank AG*, 85 *Federal Reserve Bulletin* 509 (1999) (commercial lending); and *NationsBank Corporation*, 84 *Federal Reserve Bulletin* 858 (1998) (commercial lending).

¹⁶ See, e.g., *Bank of Montreal* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 24 (3rd Quar. 2011).

Financial and Managerial Resources

The Board considered the financial and managerial resources 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 at consummation, 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. Notificants are well capitalized and would remain so on consummation of the proposal. PWB and CSB are also well capitalized and would remain so after consummation. The proposed transaction is structured as a cash and share exchange, and the total consideration for the transaction would be approximately \$2.3 billion. Notificants are in satisfactory condition, and the asset quality, earnings, and liquidity of PWB and CSB 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 the proposed combined organization. The Board has reviewed the examination records of Notificants, PWB, CapitalSource, and CSB, including assessments of their management expertise, internal controls, 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 laws and with anti-money-laundering laws.

PacWest and PWB are considered to be well managed. PacWest's existing risk-management program and its directorate and senior management weigh in favor of approval. The directors and senior executive officers of PacWest have substantial knowledge of, and experience in, the banking and financial services sectors. PacWest has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Since 2000, PacWest has acquired and successfully integrated into its operations more than 20 banking organizations.

The Board also has considered Notificants' plans for implementing the proposal. PacWest is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. PacWest would implement risk-management policies, procedures, and controls at the combined organization that include elements of existing policies of both PacWest and CapitalSource as well as certain new policies. In addition, PacWest's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and PacWest plans to integrate CSB's existing management and personnel in a manner that augments PWB's management team.

PacWest's integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors 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 and PacWest's anti-money-laundering policies on balance weigh in favor of approval.

Record of Performance under the CRA

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation.¹⁷ 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.¹⁸

The Board has considered all the facts of record, including reports of examination of the CRA performance records of PWB and CSB, information provided by PacWest, confidential supervisory information, and the public comments received on the proposal. The commenters objected to the proposal on the basis of PWB's CRA performance record.

A. Records of Performance under the CRA

As provided in the CRA, the Board has evaluated the proposal in light of the examinations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions.¹⁹ The CRA requires that the appropriate federal financial 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 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 PWB. PWB was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, in October 2010 ("PWB Evaluation"). PWB was evaluated using the large bank examination procedures, which evaluate the institution's performance under the Lending, Investment, and Service Tests within the assessment areas it serves.²¹ The PWB Evaluation covered the Los Angeles, San Diego, Riverside-San Bernardino East, Murrieta-Temecula, and San Francisco assessment areas.²² PWB received "low satisfactory" ratings for the Lending, Investment, and Service Tests.²³

As described in the PWB Evaluation, FDIC examiners found that the bank's overall volume of lending was good and reflected good responsiveness to its assessment areas' credit needs.²⁴ Examiners found that PWB's geographic distribution of loans was good, emphasizing that a substantial majority of its small business loan originations were made inside

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

¹⁸ 12 U.S.C. § 2903.

¹⁹ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Fed. Reg.* 11,642 at 11,665 (March 11, 2010).

²⁰ 12 U.S.C. § 2906.

²¹ See 12 CFR 345.21(a)(1).

²² Examiners conducted a full-scope review of the Los Angeles assessment area and a limited-scope review of the other assessment areas.

²³ The evaluation period for the Lending Test in the PWB Evaluation was January 1, 2009 to September 30, 2010, except for community development loans, for which the evaluation period was from December 15, 2008 through October 18, 2010. The evaluation period for the Investment and Service Tests was from December 15, 2008 through October 18, 2010.

²⁴ Small- and medium-sized business lending is the bank's primary lending focus.

its assessment areas.²⁵ Examiners also determined that PWB exhibited an adequate record of serving the needs of the highly economically disadvantaged in its assessment areas. Further, examiners found that PWB made an adequate level of community development loans. However, the examiners also noted that PWB's distribution of borrowers reflected poor penetration among business customers of different revenue sizes and that PWB made limited use of innovative or flexible lending practices.

With respect to the Investment Test, examiners noted that PWB had an adequate level of qualified community development investments and grants, particularly those that are not routinely provided by private investors. Examiners also highlighted PWB's occasional use of innovative and/or complex investments to support community development initiatives, as well as the institution's adequate level of responsiveness to credit and economic development needs.

With respect to the Service Test, examiners noted that delivery systems were reasonably accessible to essentially all portions of the institution's assessment areas. Examiners also noted that PWB's opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals. Further, examiners highlighted that PWB's services did not vary in a way that inconvenienced portions of its assessment areas and that the institution provided an adequate level of community development services.

CRA Performance of CSB. CSB was assigned an "outstanding" rating at its most recent CRA performance evaluation by the FDIC in June 2013 ("CSB Evaluation").²⁶ CSB was evaluated using the wholesale bank examination procedures, which evaluate an institution's community development performance based on community development lending, qualified investments, and community development services.²⁷ The CSB Evaluation covered the Los Angeles, Fresno, Kern, Tulare, and Kings assessment areas. Examiners highlighted CSB's high level of community development loans and excellent record of performance in meeting the credit needs of its assessment areas. Examiners noted that, during the evaluation period, CSB extended or purchased a total of 106 community development loans for \$366.6 million. Further, examiners noted that the institution had a high level of qualified investments and donations and occasionally used innovative or complex qualified investments. During the evaluation period, CSB made 22 new qualified investments for \$41.7 million, 368 qualified donations for \$1.1 million, and maintained its investments in qualified mortgage-backed securities. Examiners also noted CSB's high level of community development services, including technical assistance offerings to, and service on boards of directors of, organizations committed to serving LMI communities. During the evaluation period, CSB contributed 6,613 qualified community service hours in its assessment areas, which represented an 85 percent increase from the prior evaluation.

PWB's Efforts Since the 2010 CRA Evaluation. PacWest represents that since the PWB Evaluation, PWB has extended 133 community development loans totaling \$350.6 million. In addition, PacWest stated that the percentage of PWB's loans to small businesses with gross annual revenues of \$1 million or less has increased from 27 percent to 35 percent since the PWB Evaluation. PacWest reported that PWB has added three Small Business Administration loan programs, including one program focused on small businesses owned by military veterans. Further, PacWest reported that PWB has made 431 charitable contributions totaling more than \$1.1 million to community-based nonprofit organizations in its

²⁵ In this context, "small business loans" are loans with original amounts of \$1 million or less that are secured by nonfarm, nonresidential properties or are commercial and industrial loans to borrowers in the United States.

²⁶ The evaluation period for the CSB Evaluation was July 1, 2010 to June 17, 2013.

²⁷ See 12 CFR 345.21(a)(2) and 345.25.

assessment areas since the PWB Evaluation. PacWest also noted that PWB executives, officers, and employees have provided approximately 8,700 community development service hours to various organizations throughout its assessment areas since the PWB Evaluation.²⁸

B. Public Comments on the Application

Commenters expressed concerns about the proposed acquisition of CSB by PWB, in light of PWB's record of performance under the CRA. Specifically, commenters criticized PWB's "low satisfactory" ratings for the Lending, Service, and Investment tests in the PWB Evaluation. In addition, commenters asserted that PWB's small business lending is generally targeted to businesses with annual revenues of more than \$1 million. Specifically, commenters asserted that, of PWB's small business loans, only 32 percent in 2012 and 35 percent in the first nine months of 2013 were made to businesses with less than \$1 million in revenue, whereas CSB made 54 percent of its small business loans to such businesses in 2012. Commenters also contended that the penetration of PWB's branches in LMI neighborhoods is low. Specifically, commenters argued that only 21 percent of PWB's branches are in LMI neighborhoods, which commenters stated was lower than PWB's peers. Commenters also expressed concern that PWB would close certain branches of CSB in LMI neighborhoods following consummation of the proposal. Further, commenters criticized PWB's level of support for affordable housing development.²⁹

In its evaluation of the proposal, the Board has considered that, although PWB received "low satisfactory" ratings for the Lending, Service, and Investment tests in the PWB Evaluation, the FDIC assigned PWB an overall "satisfactory" CRA rating. In addition, the Board has considered PWB's efforts since the PWB Evaluation. As noted above, PacWest represents that PWB has provided loans, investments, contributions, and service hours to meet the credit needs of its communities since the PWB Evaluation. PacWest reports that PWB originated \$88.5 million and \$155 million in community development loans in 2012 and 2013, respectively, compared to \$24 million in 2009. Further, PacWest reports that PWB has more than doubled the dollar volume of qualified equity investments and charitable contributions since the PWB Evaluation. The Board's analysis of the CRA-related activities reported by PWB—including \$57 million of qualified equity investments, \$1.1 million of charitable contributions, and approximately 8,700 community development service hours—indicates that PWB has demonstrated continued commitment to meeting the credit needs of the communities it serves.

PWB made 1,109 small business loans in 2012, of which 32 percent were made to businesses with less than \$1 million in revenue. In comparison, within PWB's CRA assessment areas, lenders in the aggregate made 47 percent of their small business loans in 2012 to businesses with less than \$1 million in revenue. Importantly, focusing only on LMI census tracts in PWB's assessment areas, PWB made 26 percent of its small business loans to businesses with less than \$1 million in revenue, compared to 23 percent for lenders in the aggregate. Further, as noted above, based on data reported by PacWest, PWB has increased the percentage of loans to small businesses with gross annual revenues of \$1 million or less in its assessment areas to 37 percent as of December 31, 2013.

²⁸ These loans, investments, contributions, and service hours have not yet been evaluated by the FDIC.

²⁹ Commenters also expressed concern that PWB would not meet the credit needs of certain rural communities currently served by CSB. The CRA requires a bank to meet the credit needs of the communities in which it operates. 12 CFR part 228. PacWest has represented that it plans to meet the credit needs of the borrowers in the rural communities served by CSB and that PWB has hired a new community development officer whose responsibilities will include the rural communities cited by commenters. The FDIC will review PWB's record of meeting the credit needs of the rural communities currently served by CSB in the course of conducting CRA performance evaluations.

Commenters expressed concern about the number of branches operated by PWB in LMI areas. Twenty-one percent of PWB's branches are located in LMI census tracts. In 2010, the FDIC concluded in the PWB Evaluation that PWB's delivery systems were reasonably accessible to essentially all portions of PWB's assessment areas. PWB's branch penetration in LMI census tracts has not changed materially since the FDIC determined that PWB's delivery systems were reasonably accessible. Since 2010, PWB has added two branches in low-income census tracts. Although PWB has reduced its presence in moderate-income census tracts by five branches since 2010, the overall decline of three LMI branches was less than PWB's reduction of seven branches in non-LMI census tracts.

On December 13, 2013, PWB provided notice to the FDIC and the California Department of Business Oversight that it intends to close 12 branches of CSB and one branch of PWB upon consummation of the proposal. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal banking agency before closing a branch.³⁰ The commenters have been afforded the opportunity to address planned branch closures in the context of the branch closings notice. The Board has reviewed PWB's branch closing policy in connection with this notice and notes that the FDIC will continue to review PWB's branch closing record in the course of conducting CRA performance evaluations.

The Board has verified that two of the CSB branches that PWB proposes to close are located in LMI communities. One such branch is approximately 250 feet from an existing PWB branch. The other CSB branch to be closed in an LMI area is approximately 5.5 miles away from the nearest PWB branch. In both cases, the PWB branch would offer certain services not offered by the CSB branch, such as demand deposit accounts and an automated teller machine. In addition, there are six other full-service branches of other banks within a one-mile radius of the CSB branch.

The Board has considered PWB's record of support for affordable housing development. In the PWB Evaluation, the FDIC noted that PWB had made approximately \$17.6 million in affordable-housing-related loans between January 2009 and October 2010. As noted above, the FDIC concluded in the PWB Evaluation that PWB's community development lending was adequate. PacWest reported that, between November 2010 and December 2013, PWB made at least eight loans totaling \$20.5 million for affordable housing projects and an \$11 million loan to a community enhancement corporation, a portion of which will be used to provide affordable housing to LMI individuals and families. Further, PacWest reported that it has invested at least \$56.7 million in qualified investments, a portion of which is related to affordable housing, since the PWB Evaluation. The Board's analysis of PWB's support for affordable housing, as well as other lending, investments, and services, indicates that PWB has made continued efforts to meet the credit needs of the communities it serves.

The Board has consulted with the FDIC, PWB's primary federal regulator, regarding its evaluation of the bank's performance under the CRA and other commenter concerns. Following its review of the issues raised by the public comments, the FDIC concluded that there was no basis for denying the merger of CSB into PWB and has approved the merger under the Federal Deposit Insurance Act.

³⁰ Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 *Fed. Reg.* 34,844 (June 29, 1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal banking agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

C. Conclusion on CRA Performance

The Board has considered all the facts of record, including the CRA performance records of the institutions involved, information provided by PacWest, comments received on the proposal and responses to those comments,³¹ and confidential supervisory information. Based on the Board's evaluation of PWB's and CSB's CRA performance records, its review of examination reports, and its consultations with the FDIC, the Board believes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, weighs in favor of approval of the application.

Some commenters urged the Board to require PacWest to provide specific pledges or plans to meet the credit needs of the communities it serves. The Board generally focuses on the existing CRA performance record of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment areas at the time the Board reviews a proposal.³² Nevertheless, the Board notes that PWB has developed a "CRA Community Development Plan" establishing performance standards for the bank during 2014 in support of its CRA compliance objectives. The CRA Community Development Plan outlines specific goals for small business lending, community development lending, qualified investments, charitable contributions, and community development services, taking into account consummation of the proposed transaction. PacWest represents that the CRA Community Development Plan is designed to improve PWB's CRA performance record, with a goal of achieving an "outstanding" rating within three years.

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.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 merged 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 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

³¹ Some commenters also questioned PWB's efforts in awarding contracts to minority- and women-owned businesses. Although the Board fully supports programs designed to promote equal opportunity and economic opportunities for all members of society, the comments about supplier diversity practices are beyond the factors the Board is authorized to consider under the BHC Act. *See, e.g., Bank of America Order* at C90. Some commenters also criticized PWB's charitable contributions as a percentage of its deposits in California. The Board notes that neither the CRA nor the banking agencies' implementing rules require that financial institutions engage in any type of philanthropy.

³² *See Bank of America Order* at C87 (2008).

³³ 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.

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

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 United States banking or financial system. After consummation, PacWest would have approximately \$15.4 billion in consolidated assets, and by any of a number of alternative measures of firm size, PacWest would be outside the 75 largest U.S. financial institutions. 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. PacWest engages in 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, PacWest's intrafinancial system 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 financial stability considerations relating to this proposal weigh in favor of an approval.

Additional Public Benefits of the Proposal

As noted above, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the Act requires the Board to “consider whether performance of the activity by a bank holding company or a subsidiary of such company 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 interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”³⁶

In addition to considering the effects discussed above, the Board has considered that the proposal would allow PWB to expand the range of financial products and services available to existing customers of CSB. Currently, CSB provides only a limited range of deposit and commercial loan products and is prohibited by its charter from offering demand deposit accounts. Following the acquisition, CSB's customers would gain access to PWB's deposit products and services, including demand deposit accounts, value checking accounts, value interest checking accounts, high-yield checking accounts, and high-yield money market accounts. PWB's value checking and value interest checking accounts may be particularly beneficial to CSB's LMI customers, as these accounts have low opening deposit requirements, lower monthly service charges compared to traditional checking accounts, and lower monthly balances required to waive monthly service charges. In addition, CSB's customers

³⁵ For further discussion of the financial stability standard, see *Capital One Order* at 28.

³⁶ 12 U.S.C. § 1843(j)(2).

would gain access to a broader range of basic lending and banking products and services, including consumer unsecured personal loans and lines of credit, secured home equity lines of credit, secured loans for property such as automobiles and boats, and overdraft lines of credit linked to demand deposit accounts. PacWest's customers would benefit from additional, more specialized commercial lending products CapitalSource provides. In addition, customers of both institutions would benefit from a more expansive branch network.

The proposal would provide the opportunity for operational efficiencies, cost savings, and revenue enhancement for the combined organization. By improving efficiencies and recognizing such savings, PacWest would be better placed to provide credit and banking services to its entire customer base, including current customers of CapitalSource.

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 conditions noted in this order, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience and needs, financial stability, and other factors weigh in favor of approval of this proposal. 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.³⁷ 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 Notificants with the conditions imposed in this order and the commitments made to the Board in connection with the notice. 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),³⁸ 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, these conditions and commitments are deemed to be conditions imposed in writing by the Board in

³⁷ Several commenters requested that the Board hold public hearings 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 commenters' requests in light of all the facts of record. In the Board's view, the 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 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.

³⁸ 12 CFR 225.7 and 225.25(c).

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

By order of the Board of Governors, effective April 1, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Sections 3 and 4 of the Bank Holding Company Act

Mercantile Bank Corporation
Grand Rapids, Michigan

Order Approving the Merger of Bank Holding Companies and Determination on a Financial Holding Company Election
FRB Order No. 2014-8 (May 7, 2014)

Mercantile Bank Corporation (“Mercantile”), Grand Rapids, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to merge with Firstbank Corporation (“Firstbank Corp.”), Alma, and thereby indirectly acquire its subsidiary banks, Firstbank, Mount Pleasant, and Keystone Community Bank (“Keystone”), Kalamazoo, all of Michigan. Following the proposed acquisition, Firstbank and Keystone would be consolidated into Mercantile’s subsidiary bank, Mercantile Bank of Michigan (“Mercantile Bank”), Grand Rapids, a state nonmember bank.² As part of its proposal, Mercantile also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (78 *Federal Register* 59689 (2013)).⁴ 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.

Mercantile, with consolidated assets of approximately \$1.4 billion, is the 478th largest insured depository organization in the United States, controlling approximately \$1.1 billion in deposits.⁵ Mercantile controls Mercantile Bank, which operates only in Michigan. Mercantile Bank is the 18th largest depository institution in Michigan, controlling deposits of approximately \$1.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

¹ 12 U.S.C. § 1842.

² The consolidation of Firstbank and Keystone into Mercantile Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

³ 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

⁴ 12 CFR 262.3(b).

⁵ Asset and nationwide deposit-ranking data are as of December 31, 2013, unless otherwise noted.

⁶ State deposit data are as of June 30, 2013, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

Firstbank Corp., with consolidated assets of approximately \$1.5 billion, is the 464th largest insured depository organization in the United States, controlling approximately \$1.2 billion in deposits. Firstbank Corp. controls Firstbank and Keystone, which both operate only in Michigan. Firstbank and Keystone together control deposits of approximately \$1.2 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Mercantile would become the 262nd largest depository organization in the United States, with consolidated assets of approximately \$2.9 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Mercantile would control total deposits of approximately \$2.4 billion. Mercantile would become the 13th largest insured depository organization in Michigan, controlling 1.4 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.⁷

Mercantile and Firstbank Corp. have subsidiary depository institutions that compete directly in the Grand Rapids and Lansing, Michigan, banking markets.⁸ The Board has considered the competitive effects of the proposal on these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by Mercantile and Firstbank Corp.; 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”);^{9,10} and other characteristics of the markets.

⁷ 12 U.S.C. § 1842(c)(1).

⁸ The Grand Rapids, Michigan, market is defined as Kent County (except Oakfield and Spencer townships); Thornapple, Irving, Carlton, Yankee Springs, Rutland, and Hastings townships in Barry County; Casnovia Township in Muskegon County; Salem, Dorr, and Leighton townships in Allegan County; and Jamestown, Georgetown, Blendon, Allendale, Tallmadge, Polkton, Wright, and Chester townships in Ottawa County, all in Michigan. The Lansing, Michigan, market is defined as Clinton, Eaton, and Ingham counties; Portland and Danby townships in Ionia County; Woodland and Castleton townships in Barry County; and Fairfield, Middlebury, Sciota, Woodhull, Perry, and Antrim townships in Shiawassee County, all in Michigan.

⁹ 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 to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁰ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the postmerger HHI is under 1000, moderately concentrated if the postmerger HHI is between 1000 and 1800, and highly concentrated if the postmerger 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 postmerger 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 (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html), the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in both markets. On consummation, the Grand Rapids market would remain moderately concentrated, and the Lansing market would remain unconcentrated, as measured by the HHI. The change in concentration in each market resulting from the transaction would be minimal. In addition, numerous competitors would remain in both markets.¹¹

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 Mercantile and Firstbank Corp. 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

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. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Mercantile and Mercantile Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares.¹² The asset quality, earnings, and liquidity of Mercantile Bank, Firstbank, and Keystone are consistent with approval, and Mercantile appears to have

¹¹ Mercantile operates the fifth largest depository institution in the Grand Rapids banking market with approximately \$898.2 million in deposits, which represent 6.5 percent of market deposits. Firstbank Corp. operates the 22nd largest depository organization in the market, controlling deposits of approximately \$39.1 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, Mercantile would continue to operate the fifth largest depository institution in the market, controlling deposits of approximately \$937.3 million, which represent 6.8 percent of market deposits. The HHI would increase by four points to 1111, and 26 competitors would remain in the market.

Mercantile operates the 13th largest depository institution in the Lansing banking market, with approximately \$112.1 million in deposits, which represent 2.2 percent of market deposits. Firstbank Corp. operates the 16th largest depository organization in the market, controlling deposits of approximately \$79.1 million, which represent 1.6 percent of market deposits. On consummation of the proposed transaction, Mercantile would operate the 10th largest depository institution in the market, controlling deposits of approximately \$191.2 million, which represent 3.8 percent of market deposits. The HHI would increase by 7 points to 838, and 22 competitors would remain in the market.

¹² As part of the proposed transaction, each share of Firstbank Corp. common stock would be exchanged for one share of Mercantile common stock.

adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Mercantile, Firstbank Corp., 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.

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

The Board also has considered Mercantile's plans for implementing the proposal. Mercantile is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Mercantile would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Mercantile's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Mercantile is proposing to integrate Firstbank's and Keystone's existing management and personnel in a manner that augments Mercantile's management.¹³

Mercantile'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, as well as the records of effectiveness of Mercantile and Firstbank Corp. in combatting money laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board 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").¹⁴ 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,¹⁵ and requires the appropriate federal financial supervisory agency to take into account a relevant

¹³ On consummation, the combined organization will have six directors on the board of directors. Three directors currently serving on Mercantile's board of directors and three directors currently serving on Firstbank Corp.'s board of directors would serve on the board of the combined organization. The President and Chief Executive Officer of Mercantile will continue to serve in his role following the merger, and the current President and Chief Executive Officer of Firstbank Corp. would serve as chairman of the board.

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

¹⁵ 12 U.S.C. § 2901(b).

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.¹⁶

The Board has considered all the facts of record, including reports of examination of the CRA performance of Mercantile Bank, Firstbank, and Keystone, data reported by Mercantile Bank, Firstbank, and Keystone under the Home Mortgage Disclosure Act ("HMDA"),¹⁷ other information provided by Mercantile, confidential supervisory information, and the public comments received on the proposal. The Board received one comment that objected to the proposal on the basis of Mercantile's fair lending record in the Grand Rapids-Wyoming, Michigan Metropolitan Statistical Area ("Grand Rapids MSA"), as reflected in 2012 HMDA data.

A. 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.¹⁸ 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.¹⁹ 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 Mercantile Bank. Mercantile Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of March 26, 2012 ("Mercantile Bank Evaluation"). Mercantile Bank received an "outstanding" rating for the Lending Test and "high satisfactory" ratings for both the Investment and Service Tests. Examiners considered Mercantile Bank to have an excellent record of lending inside its assessment areas and noted that Mercantile Bank was a leader in community development lending.²⁰

As described in the Mercantile Bank Evaluation, FDIC examiners found that the bank's overall lending activity was excellent.²¹ The bank originated a substantial majority of its loans within its designated assessment areas during the review period. Examiners found that the overall distribution of small business loans reflected excellent penetration among businesses of different sizes. They also found that the geographic distribution of home mortgage and small business loans reflected excellent penetration throughout the bank's assessment areas, including LMI geographies.

¹⁶ 12 U.S.C. § 2903.

¹⁷ 12 U.S.C. § 2801 *et seq.*

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

¹⁹ 12 U.S.C. § 2906.

²⁰ The Mercantile Bank Evaluation was conducted using Large Institution CRA Examination Procedures, and examiners reviewed loan data and small business lending activity reported by Mercantile Bank from January 1, 2009, to December 31, 2011. The home mortgage lending data reviewed included data for the bank's then mortgage company, Mercantile Bank Mortgage Company, LLC ("Mercantile Mortgage"), which was dissolved in January 2013.

²¹ Examiners placed greater weight on the bank's performance in small business lending over home mortgage lending because commercial lending is the bank's primary focus. Examiners also placed greater weight on the bank's performance in the portions of its assessment areas falling within three MSAs: the Grand Rapids MSA, the Holland-Grand Haven, Michigan MSA ("Holland MSA"), and the Lansing-East Lansing, Michigan MSA ("Lansing MSA").

Examiners also noted that Mercantile Bank is a leader in community development lending. During the evaluation period, the bank originated 28 qualifying community development loans totaling approximately \$59.7 million in the Grand Rapids MSA, three loans totaling approximately \$1.6 million in the Holland MSA, and one loan of \$223,000 in the Lansing MSA.

In evaluating the Investment Test, examiners found that Mercantile Bank had a significant level of qualified community development investments. Examiners highlighted numerous CRA-qualified investments that the bank made, including donations to organizations with a community development focus. Examiners also noted that Mercantile Bank participated in various CRA-qualified investment vehicles.

In evaluating the Service Test, examiners observed that the bank's delivery systems were accessible to essentially all portions of its assessment areas and individuals of different income levels. Examiners also noted that Mercantile Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals. Examiners noted that Mercantile Bank offered alternative delivery systems that increased the availability of its loan and deposit products, including online banking, a 24-hour telephone banking system, mobile and other electronic banking products, and courier services. Examiners also found that the bank provided a relatively high level of community development services.

Examiners noted that Mercantile Bank had not received any complaints regarding its performance in meeting the credit needs of its assessment areas. The examination did not result in any findings of discrimination relating to Mercantile Bank's fair lending policies and procedures or to underwriting decisions by the bank's management. The Board has consulted with the FDIC regarding the Mercantile Bank Evaluation.

CRA Performance of Firstbank. Firstbank was assigned a "satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of September 27, 2011 ("Firstbank Evaluation"), with ratings of "satisfactory" for the Lending and Community Development Tests.²² Examiners noted that Firstbank's CRA performance demonstrated a practice of providing for the credit needs of its assessment area.²³

In evaluating the Lending Test, examiners noted that the bank originated a majority of its loans within its assessment area, illustrating reasonable performance. Examiners also found that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable dispersion throughout its assessment area and that the bank's distribution of loans to borrowers reflected a reasonable penetration of individuals of different income levels, including LMI individuals, and businesses of different sizes.

With respect to the Community Development Test, examiners noted that Firstbank's community development performance reflected adequate responsiveness to the community's development needs in the assessment area. Examiners also found that Firstbank provided an adequate level of community development services through its employee involvement in community development organizations and its retail banking services that benefit LMI individuals.

²² The Firstbank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures, and examiners reviewed the bank's commercial and residential lending activity from July 21, 2008, to July 29, 2011. These products were selected for analysis because they represented 51 percent and 30 percent, respectively, of the bank's loan portfolio. At the request of Firstbank's management, examiners also considered the lending activity of Firstbank Mount Pleasant Mortgage Company, which, at that time, was a subsidiary of Firstbank.

²³ The Firstbank Evaluation reviewed the bank's non-MSA assessment area, which includes Wexford, Missaukee, Osceola, Clare, Mecosta, Isabella, and Montcalm counties, all in Michigan.

CRA Performance of Keystone. Keystone was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of August 17, 2009 (“Keystone Evaluation”).²⁴ Examiners noted that the bank’s CRA performance demonstrated a reasonable responsiveness to the credit needs of its assessment area. Examiners found that a majority of the small business and residential real estate loans originated by Keystone were made within the bank’s assessment area.²⁵ Examiners also noted that Keystone’s overall distribution of loans reflected a reasonable dispersion within its assessment area and that Keystone’s penetration of loans among individuals of different income levels, including LMI individuals and businesses of different sizes, was reasonable given the demographics of the assessment area.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Mercantile Bank, Firstbank, and Keystone in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Mercantile Bank, Firstbank, and Keystone Evaluations, assessed Mercantile Bank’s HMDA data, and considered the comment on the application and other agencies’ views on Mercantile Bank’s record of performance under fair lending laws. The Board also considered Mercantile Bank’s fair lending policies and procedures.

Analysis of HMDA Data The Board analyzed Mercantile Bank’s and Mercantile Mortgage’s 2011 and 2012 HMDA data, the most recent publicly available in the specific market area addressed in the public comment (Grand Rapids MSA). The commenter expressed concerns that Mercantile was not meeting the credit needs of minority individuals in the Grand Rapids MSA, based on 2012 HMDA data. In particular, the commenter alleged that Mercantile did not originate loans to African Americans or Hispanics across a range of loan products, including conventional home purchase loans, refinance loans, and home improvement loans in the Grand Rapids MSA. The commenter also asserted that Mercantile disproportionately denied applications by African American applicants for refinance loans in the Grand Rapids MSA.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide 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 Mercantile Bank excluded or denied credit to any group on a prohibited basis.²⁶ Fully evaluating Mercantile Bank’s compliance with fair lending laws and regulations 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

²⁴ The Keystone Evaluation was conducted using the Small Bank CRA Examination Procedures in Keystone’s single assessment area of Kalamazoo and Van Buren counties, both in Michigan. Examiners reviewed loan data reported by Keystone from January 1, 2007, to June 30, 2009. Examiners also considered a sample of business loans originated by Keystone from January 1, 2007, to June 30, 2009.

²⁵ Examiners did not consider loans originated by Keystone Mortgage Services, LLC, Keystone’s mortgage subsidiary, in their determination of whether Keystone’s small business and residential real estate loans were made within its assessment area.

²⁶ 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 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 (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.

observed lending disparities persist after taking into account legitimate underwriting factors.

The Board's review in this case generally confirmed the levels of lending by Mercantile to African American and Hispanic borrowers and the denial disparity ratio noted by the commenter. Mercantile states that the low level of applications received from African Americans and Hispanics is due to several factors: the effect of persistently weak economic conditions on minorities in Grand Rapids, the very low percentage of applications received by all home mortgage reporters from African Americans and Hispanics in the Grand Rapids MSA, strong competition from other banks in the market to attract home mortgage applications from minorities, and the fact that home mortgage loans to individuals account for only a small portion of Mercantile's total lending.²⁷ In light of the low levels of applications received by Mercantile from African Americans and Hispanics in the Grand Rapids MSA, the Board conducted a lending analysis for 2012 comparing Mercantile to its peers in minority tracts of the MSA and did not find statistically significant disparities.²⁸

The Board has consulted with the FDIC, the primary supervisor of each of the banks involved in the proposal. In connection with the bank merger application, the FDIC received, and conducted an analysis of, an identical comment on Mercantile's record of lending to African Americans and Hispanics in the Grand Rapids MSA. The FDIC considered the HMDA data cited by the commenter; Mercantile Bank's CRA, consumer compliance, and fair lending record; the bank's targeted marketing to African Americans and Hispanics; and other community outreach efforts. The FDIC concluded that it did not find evidence of Mercantile Bank engaging in discriminatory or other illegal credit practices, and that the public comment should not preclude approval of the proposal.

Mercantile's Fair Lending Program. Mercantile 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 review of the bank's marketing and advertising, compliance training for applicable employees, comparative loan file reviews, and risk reviews of all potential fair lending complaints. Mercantile reported that all consumer loan and mortgage denials are subject to independent second reviews, and all commercial loan denials are reviewed by the bank's Compliance Officer. Mercantile reported that the bank's compliance and internal audit departments conduct annual fair lending risk assessments to analyze potential vulnerabilities in loan processes and controls and ensure that the bank's lending policies are consistently and fairly applied. In addition, the bank engages in monthly monitoring to ensure compliance with federal and state laws and regulations, and all customer complaints received by the bank are reviewed by the bank's Compliance Officer and Risk Management Director.²⁹ Mercantile's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

²⁷ Commercial real estate and commercial and industrial loans account for approximately 80 percent of Mercantile's total lending, while residential real estate loans only account for approximately seven percent of the bank's loan portfolio, based on the dollar amount of loans outstanding as of December 31, 2013.

²⁸ In this case, minority tracts are those in which the majority of residents are African American or Hispanic.

²⁹ A commenter criticized Mercantile Bank for providing its 2013 HMDA loan/application register in paper format rather than in electronic format as he had requested. As a result, the commenter requested an extension of the comment period for the proposal. However, Mercantile Bank provided its HMDA loan/application register to the commenter in accordance with the Consumer Financial Protection Bureau's regulations. See 12 CFR Part 1003, Supplement I §1003.5(b)(2). The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenter's request for additional time does not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend the public comment period.

In addition, Mercantile stated that the bank performs an annual fair lending self-assessment, in which the bank's Compliance Officer reviews all residential home mortgage loan denials and home equity loan denials to ensure consistent application of underwriting practices. Mercantile also reported that the compliance department conducts a comparative file review to ensure that similarly situated borrowers receive equal treatment and that underwriting practices are consistently applied. The fair lending assessment also includes a review of the bank's marketing and advertising and evaluates the bank's assessment area to ensure that it does not arbitrarily exclude LMI or minority areas.

Mercantile Bank's 2012 fair lending self-assessment found that the bank's policies, procedures, and underwriting practices were appropriate and consistently followed. The self-assessment also recommended that the second review process be expanded to include withdrawn and incomplete applications, that the bank implement requirements for using alternative credit references, and that the bank increase the scope of billboard advertising closer to LMI areas. The self-assessment noted a decline in home mortgage applications from African Americans and Hispanics, but stated that the bank had increased its advertising and outreach to those communities. Although Mercantile indicated that it generally does not advertise home mortgage loans, during 2012 and 2013, it placed a number of mortgage-related advertisements targeted to the African American and Hispanic communities in Grand Rapids. The bank also expanded the focus of its financial education seminars to include managing credit and buying or refinancing a home; these seminars were held at an African American church and a community center located in a predominantly African American census tract.

Mercantile indicates that these targeted marketing efforts have been successful in increasing the number of applications from and mortgages to minority borrowers. Mercantile reports that minority borrowers (including joint race and joint ethnicity applicants³⁰) accounted for 8.4 percent of the bank's HMDA-reportable applications for the first three quarters of 2013, an increase from the average of .5 percent from 2009 to 2012. Mercantile also states that minority borrowers accounted for 9.6 percent of home mortgage applications for all of 2013, the highest level over the last five years.

C. 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.

Mercantile represents that the proposal would provide opportunities to achieve cost savings for the combined organization by consolidating redundant functions, including data processing. Mercantile 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. Mercantile also states that the combined organization will have greater financial and managerial resources, a more diversified asset base, and access to a broader range of markets, enabling it to be a more effective competitor in its markets.

³⁰ A joint race application is an application in which one applicant reports a single racial designation of "white" and the other applicant reports one or more minority racial designations. A joint ethnicity application is an application in which one applicant reports ethnicity as Hispanic or Latino and the other applicant reports ethnicity as not Hispanic or Latino.

Mercantile also states that the proposal would offer customers convenience through a broader range of financial products and services not currently available at all of the banks. Mercantile asserts that the merger would allow customers of the combined organization to benefit from the experience of each organization. In particular, Mercantile's customers would benefit from expanding Firstbank Corp.'s home mortgage and consumer lending products in areas currently served by Mercantile. Firstbank Corp.'s customers would benefit from Mercantile's commercial lending focus and expanding Mercantile's small business lending in areas currently served by Firstbank Corp. In addition, the merger would benefit Mercantile's and Firstbank Corp.'s current customers through access to significantly larger branch and ATM networks. The branch network available to Mercantile and Firstbank Corp. customers would increase from 7 and 48, respectively, to 56 locations throughout Michigan.³¹

D. 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 Mercantile, confidential supervisory information, and the public comments on the proposal. Based on the Board's analysis of the HMDA data, evaluation of the lending operations and compliance programs of Mercantile Bank, Firstbank, and Keystone, review of examination reports, and consultations with other agencies, 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."³²

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.³³ These categories are not exhaustive, and additional categories could inform the Board's decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, that are indicative

³¹ A commenter also asserted that, based on public statements made by senior executives of Mercantile and Firstbank Corp., the combined organization would not expand into banking markets located in southeast Michigan. The CRA does not require an institution to expand into new markets. The CRA does require Mercantile Bank to help meet the credit needs of the communities in which it operates. As noted above, Mercantile Bank received an "outstanding" CRA rating from the FDIC, which demonstrates the bank's efforts in meeting the credit needs of its communities.

In addition, a commenter provided the Board with a copy of a class action lawsuit filed against Mercantile in the state of Michigan, alleging that the company engaged in discriminatory lending practices against African Americans. The litigation is in its preliminary stages, and no wrongdoing has been adjudicated.

³² Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

³³ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

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.³⁴

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Mercantile would have approximately \$2.9 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not rank among the 100 largest U.S. financial institutions. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in 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, crossborder 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, Mercantile's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Financial Holding Company Election

As noted above, Mercantile has elected to become a financial holding company in connection with the proposal. Mercantile has certified that it and Mercantile Bank are well capitalized and well managed and has provided all the information required under the Board's Regulation Y.³⁵ Mercantile also has stated that upon consummation of the proposal, Mercantile and each depository institution it would control would be well capitalized and well managed. Based on all the facts of record, the Board has determined that Mercantile's election will become effective upon consummation of the proposal if, on that date, Mercantile is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have a CRA rating of at least "satisfactory."

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 con-

³⁴ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

³⁵ See section 606(a) of the Dodd-Frank Act; 12 CFR 225.82(b).

³⁶ A commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board 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. 12CFR 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 represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, the

sidered 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 Mercantile with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective May 7, 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

CaixaBank, S.A.
Barcelona, Spain

*Order Approving Establishment of a Representative Office
FRB Order No. 2014-09 (May 12, 2014)*

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

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Times*, July 11, 2013). The time for filing comments has expired, and all comments received have been considered.

CaixaBank, with total consolidated assets of approximately \$470 billion, is the third largest bank in Spain.² CaixaBank engages in a range of commercial and retail banking activities in Spain and internationally and currently has no direct operations in the United States. Outside Spain, CaixaBank operates branches in Poland, Romania, and Morocco. It also maintains representative offices in Europe, Asia, the Middle East, and South America.

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 request does not identify disputed issues of fact that are material to the Board’s decision 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 would 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.

¹ 12 U.S.C. § 3107(a).

² Asset and ranking data are as of December 31, 2013.

CaixaBank owns approximately 46 percent of the shares of Banco BPI S.A., Porto, Portugal.³ Approximately 64 percent of CaixaBank's shares are owned by Caja de Ahorros y Pensiones de Barcelona ("La Caixa"), Barcelona, a licensed savings bank.⁴ No other shareholder owns 5 percent or more of CaixaBank's shares.

The proposed representative office would act as a liaison between CaixaBank's head office and customers in the United States. The proposed representative office would also conduct research, perform preliminary and servicing steps in connection with lending, and perform back-office functions.⁵

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

As noted above, CaixaBank engages directly in the business of banking outside the United States.⁸ CaixaBank also has provided the Board with the information necessary to assess the application through submissions that address the relevant issues.

³ In November 2013, the Board approved the establishment of representative offices in New Jersey and Massachusetts by Banco BPI. *Banco BPI, S.A.*, FRB Order No. 2013-9 (November 18, 2013). CaixaBank also owns approximately 17 percent of the shares in *Bank of East Asia* ("BEA"), Hong Kong, which is a bank holding company for the purposes of the Bank Holding Company Act of 1956, as amended ("BHC Act"). CaixaBank has provided passivity commitments to the Board to help assure that CaixaBank's ownership in, and business relationships with, BEA would not enable CaixaBank and its affiliates to exercise a controlling influence over BEA for the purposes of the BHC Act.

⁴ La Caixa does not issue shares and is not owned by any other company or individual. It is governed, represented, and controlled by a General Assembly, a board of directors and a Control Committee. These governing bodies comprise representatives of deposit holders, founding entities, community-interest institutions, local authorities, and employees.

⁵ A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

⁶ 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and the relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis or comparable information that permits analysis of the bank's financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board's determination.

⁷ See 12 U.S.C. § 3105(d)(3)-(4); 12 CFR 211.24(c)(2). These standards include: 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).

⁸ La Caixa engages in the business of banking outside the United States indirectly through CaixaBank.

The Board has previously determined, in connection with applications involving other banks in Spain, that those banks were subject to home country supervision on a consolidated basis by their home country supervisor, the Bank of Spain.⁹ CaixaBank and La Caixa are supervised by the Bank of Spain on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that CaixaBank and La Caixa are subject to comprehensive supervision on a consolidated basis by their home country supervisor. The Bank of Spain has no objection to the establishment of the proposed representative office.

CaixaBank 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 CaixaBank'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.

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

CaixaBank 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 BHC Act, and other applicable federal law. To the extent that providing such information to the Board may be prohibited by law or otherwise, CaixaBank 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 Spain may share information on CaixaBank'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 CaixaBank and La Caixa have 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 CaixaBank in its home country; the scope of CaixaBank'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 CaixaBank 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.

⁹ 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.* (order dated October 16, 2008), 95 *Federal Reserve Bulletin* B23 (2009).

On the basis of all the facts of record, and subject to commitments made by CaixaBank and La Caixa, CaixaBank'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.¹⁰ Should any restrictions on access to information on the operations or activities of CaixaBank and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by CaixaBank or its affiliates with applicable federal statutes, the Board may require termination of any of CaixaBank's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by CaixaBank 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 May 12, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board

The Joyo Bank, Ltd.

Mito City, Japan

Order Approving Establishment of a Representative Office
FRB Order No. 2014-7 (April 18, 2014)

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

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Daily News*, August 30, 2013). The time for filing comments has expired, and all comments received have been considered.

Joyo, with total assets of approximately \$82 billion, is the 13th largest bank in Japan by asset size.² Joyo engages in a range of commercial and retail banking activities through its

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 State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of CaixaBank in accordance with any terms or conditions that they may impose.

¹ 12 U.S.C. § 3107(a).

² Asset and ranking data are as of December 31, 2013. Northern Trust Company ("NTC") owns approximately 5.3 percent of the shares of Joyo, as of March 31, 2013. NTC holds these shares in registered nominee accounts for various beneficial owners, including Silchester Partners Limited, London, England, which, when it last notified Joyo as required by Japanese law, owned 5.1 percent of the shares of Joyo. No other shareholder owns 5 percent or more of the outstanding shares of Joyo.

150 domestic branches. Outside Japan, Joyo operates representative offices in the People's Republic of China and Singapore. Joyo has no operations in the United States.³

The proposed representative office would act as a liaison between Joyo and its U.S. customers and correspondent banks. The proposed representative office would also engage in other representational activities, including gathering information and conducting research.⁴

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

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

The Board has previously determined, in connection with applications involving other banks in Japan, that those banks were subject to home country supervision on a consolidated basis by their home country supervisor, Japan's Financial Services Agency ("FSA").⁷ Joyo is supervised by the FSA on substantially the same terms and conditions as those other banks. Based on all the facts of record, including the above information, it has been determined that Joyo is subject to comprehensive supervision on a consolidated basis by its home country supervisor. The FSA has no objection to the establishment of the proposed representative office.

³ In 1987, Joyo opened a representative office in New York, which was converted to a branch in 1989 and closed in 2002.

⁴ A representative office may engage in representational and administrative functions in connection with the banking activities of the foreign bank, including soliciting new business for the foreign bank, conducting research, acting as a liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, and performing back-office functions. A representative office may not contract for any deposit or deposit-like liability, lend money, or engage in any other banking activity. 12 CFR 211.24(d)(1).

⁵ 12 U.S.C. § 3107(a)(2); 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.

⁶ 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).

⁷ See, e.g., *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *The Bank of Fukuoka, Ltd.* (order dated September 27, 2011), 97 *Federal Reserve Bulletin* 14 (3rd Quar. 2011); *Mitsubishi UFJ Financial Group, Inc.* (order dated June 14, 2011), 97 *Federal Reserve Bulletin* 10 (2nd Quar. 2011).

Joyo 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 Joyo'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.

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

Joyo has committed to make available to the Board such information on the operations of Joyo 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, Joyo 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 FSA may share information on Joyo'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 Joyo 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 Joyo in its home country; the scope of Joyo'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 Joyo 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 Joyo, Joyo'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.⁸ Should any restrictions on access to information on the operations or activities of Joyo and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Joyo or its affiliates with applicable federal statutes, the Board may require termination of any of Joyo's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Joyo with the conditions imposed in this order and the commitments made to the Board in connection with this application.⁹ For purposes of this action, these commitments and conditions are deemed to

⁸ 12 CFR 265.7(d)(12).

⁹ 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

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 April 18, 2014.

Margaret McCloskey Shanks
Deputy Secretary of the Board

application does not supplant the authority of the State of New York or its agent, the New York State Department of Financial Services, to license the proposed office of Joyo in accordance with any terms or conditions that they may impose.