



Legal Developments: Third Quarter, 2014

Orders Issued Under Bank Holding Company Act

Order Issued Under Section 3 of the Bank Holding Company Act

Old National Bancorp
Evansville, Indiana

*Order Approving the Merger of Bank Holding Companies
FRB Order No. 2014-13 (July 14, 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 United Bancorp, Inc. (“United”), and thereby indirectly acquire its subsidiary bank, United Bank & Trust (“United Bank”), both of Ann Arbor, Michigan. Immediately following the proposed merger, United 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 (79 *Federal Register* 12194 (2014)).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 \$10.3 billion, is the 101st largest insured depository organization in the United States,⁴ controlling approximately \$7.8 billion in deposits. Old National controls Old National Bank, which operates in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National Bank is the 26th largest insured depository institution in Michigan, controlling approximately \$606 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

United, with consolidated assets of approximately \$899 million, is the 745th largest insured depository organization in the United States,⁵ controlling approximately \$790 million in deposits. United controls United Bank, which operates only in Michigan. United Bank is the 23rd largest insured depository institution in Michigan, controlling approximately

¹ 12 U.S.C. § 1842.

² The merger of United Bank into Old National 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. 12 U.S.C. § 1828(c).

³ 12 CFR 262.3(b).

⁴ Asset and nationwide deposit-ranking data are as of December 31, 2013, and have been updated for mergers involving parties to this proposal that have been consummated through April 25, 2014.

⁵ Asset and nationwide deposit-ranking data are as of December 31, 2013. As of March 31, 2014, United had consolidated assets of approximately \$922 million.

\$800 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁶

On consummation of this proposal, Old National would become the 98th largest depository organization in the United States, with consolidated assets of approximately \$11.2 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 \$8.6 billion. In Michigan, Old National would become the 15th largest banking organization, controlling approximately \$1.4 billion in deposits, 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 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 also must take into account the record of performance of the acquiring bank 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 bank’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 Old National is Indiana, and United’s home state is Michigan.¹³ Old National is well capitalized and well managed under applicable law. Michigan has no minimum age requirement and United Bank has been in existence for more than five years.

⁶ All Michigan statewide and market-level deposit data are as of June 30, 2013, and have been updated for mergers involving parties to this proposal that have been consummated through April 25, 2014. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

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.

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, Old National 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 Michigan, the only state in which Old National and United have overlapping banking operations. The Board has taken into account Old National'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 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.¹⁴ Old National Bank and United Bank compete directly only in the Lenawee, Michigan, banking market (the "Lenawee banking market").¹⁵

The Board has considered the competitive effects of this proposal on the Lenawee banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market ("market deposits") controlled by Old National and United;¹⁶ 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");¹⁷ and other characteristics of the market.

In the Lenawee banking market, Old National Bank is the seventh largest depository institution, controlling approximately \$32 million in deposits, which represent approximately 2.8 percent of market deposits. United Bank is the largest depository institution in the market, controlling approximately \$396 million in deposits, which represent approximately

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ The Lenawee banking market is defined as Lenawee County, Michigan. Deposit, market share, and ranking data for the market are all as of June 30, 2013.

¹⁶ Deposit and market share data are as of June 30, 2013, updated to reflect mergers involving parties to this proposal which have been consummated through April 25, 2014 and, unless otherwise noted, 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).

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 (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 DOJ Bank Merger Guidelines, which were issued in 1995, were not modified.

34.4 percent of market deposits. On consummation, Old National Bank would become the largest depository institution in the market, controlling approximately \$428 million in deposits, and its pro forma market share would be approximately 37.2 percent. The HHI would increase by 191 points, from 1877 to 2068.

The Board has considered factors that mitigate the competitive effects of the proposal in the Lenawee banking market.¹⁸ First, a bank made a de novo entry into the market by opening a branch in 2012, suggesting that the market may be attractive for future entry. Second, there are two other competitors in the Lenawee banking market with market shares over 10 percent,¹⁹ and five other competitors with market shares over 5 percent. The total number of institutions with market shares over 5 percent in the Lenawee banking market indicates a relatively balanced market structure in which many institutions have a strong competitive presence in the market and are able to exert competitive pressure on the largest firm in the market.²⁰ Accordingly, the Board has concluded that these factors mitigate, in part, the potential effects of the proposal on the Lenawee banking market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and advised the Board that it does not believe that consummation of the proposal is likely to have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

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 Lenawee banking market 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 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.

¹⁸ 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).

¹⁹ One of these competitors has an actual market share over 20 percent in the Lenawee banking market. However, this institution is a credit union and is less active in commercial lending, so its market deposits have been weighted at 50 percent.

²⁰ In its review of the Lenawee banking market, the Board included several thrifts and credit unions as market competitors. One thrift was given a 100 percent weighting rather than the customary 50 percent, because its ratio of commercial and industrial loans to total assets was above the national average for bank holding companies. Two credit unions were included in the calculations at the customary 50 percent weight.

The Board has considered the financial factors of the proposal. Old National and Old National 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 a cash and share exchange.²¹ The asset quality, earnings, and liquidity of Old National Bank and United 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, United, 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, United, and their subsidiary depository institutions 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 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 Old National and United in combatting money laundering activities, are consistent with approval.²²

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

²¹ As part of the proposed transaction, each share of United common stock would be canceled and converted into a right to receive cash and Old National common stock based on an exchange ratio.

²² 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.s

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

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 Old National Bank and United Bank, data reported by Old National Bank and United Bank under the Home Mortgage Disclosure Act ("HMDA"),²⁶ 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 and United's fair lending records 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.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 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 "outstanding" rating for the Lending Test and "high satisfactory" ratings for both the Investment Test and the Service Test.²⁹ 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.³⁰

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

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, 11665 (2010).

²⁸ 12 U.S.C. § 2906.

²⁹ The evaluation period for the Old National Bank Evaluation was July 1, 2008, through December 31, 2012.

³⁰ 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.

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 had 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 United Bank. United Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC") in June 2011 ("United Bank Evaluation"). United Bank received a "high satisfactory" rating for each of the Lending Test, Investment Test, and the Service Test.³¹ In evaluating the Lending Test, FDIC examiners concluded that United Bank's lending levels reflected good responsiveness to its assessment area's credit needs. Examiners found that the majority of the bank's loans were originated in the overall assessment area, and the geographic distribution of its loans was adequate. Examiners also found that United Bank made a relatively high level of community development loans, used innovative and flexible lending practices to serve the credit needs of its assessment area, and that its level of community development activities represented very good responsiveness to community credit needs in its assessment area. In evaluating the Investment Test, examiners found that the bank had a significant level of qualified community development investments and donations in its assessment area, particularly in Lenawee County. In evaluating the Service Test, examiners noted that United Bank's branch and ATM network provided access to all portions of its assessment area and that the bank provided a high level of community development services.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Old National Bank and United Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Old National Bank Evaluation and the United Bank Evaluation, assessed Old National Bank's and United Bank's HMDA data, and considered the comment on the application as well as 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 and United Bank's 2012 HMDA data, the most recent publicly available, as well as preliminary 2013 HMDA 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 those data

³¹ The United Bank Evaluation was conducted using Large Bank CRA evaluation procedures in United Bank's single assessment area of Lenawee, Washtenaw, and Monroe counties, all in Michigan. Examiners reviewed loan data reported by United Bank from January 1, 2009, to March 31, 2011.

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 each bank’s combined assessment areas and the specific market areas addressed in the public comment (Indianapolis, Evansville, and Fort Wayne, Indiana MSAs; and the Ann Arbor, Michigan MSA). Within those data sets, the Board focused its review on data related to conventional home purchase loans, FHA, FSA/RHS, and VA home purchase loans, refinance loans, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

Old National Bank’s HMDA Data and Branch Closings. 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.³²

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 2013.³³ 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.

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 the bank excluded or denied credit to any group on a prohibited basis.³⁴ Fully evaluating a 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 informa-

³² The allegations made by the commenter regarding Old National’s fair lending record are identical to those made by the same commenter in connection with Old National’s application to merge with Tower Financial Corporation (“Tower”), Fort Wayne, Indiana. The Board considered those allegations and approved that proposal. See *Old National Bancorp*, FRB Order No. 2014-6 (April 7, 2014).

³³ 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. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

³⁴ The data, for example, do not account for the possibility that an institution’s outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of 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.

tion contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with, and placed great emphasis on the views of, 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, in November 2012 and November 2013, the OCC conducted targeted examinations of Old National Bank's risk management program for fair lending compliance, in which it assessed Old National Bank's fair lending policies, procedures, and practices, and these targeted examinations 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.

With respect to the specific HMDA data on home purchase and home improvement 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 commenter also alleged that Old National has a business strategy of closing branches and reducing financial services, resulting in inconvenience to local communities.³⁵ See Old National Bancorp, FRB Order No. 2014-6 (April 7, 2014). 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.³⁶ 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.³⁷ 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.

³⁵ The commenter further alleged that Old National has been closing branches for the purpose of keeping its total 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 Old National already has more than \$10 billion in total assets, following the acquisition of Tower. See *Old National Bancorp*, FRB Order No. 2014-6 (April 7, 2014).

³⁶ Branch data are as of May 1, 2014, and include branches acquired by Old National through its acquisition of Tower in April 2014.

³⁷ 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.

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 process, 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 with 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.

United Bank's HMDA Data. The commenter also expressed concerns that United Bank was not meeting the credit needs of minority individuals in the Ann Arbor, Michigan MSA, based on 2012 HMDA data. In particular, the commenter alleged that United Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans and refinance loans, in the Ann Arbor MSA. The commenter also asserted that United Bank disproportionately denied applications by Hispanic applicants in the MSA, suggesting a pattern of denial-rate disparities.

In general, the Board's review confirmed the levels of lending by United Bank to African American and Hispanic borrowers and denial-disparity ratios noted by the commenter.³⁸ 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 United Bank in its combined assessment areas, as well as in the Ann Arbor MSA individually, did not show any significant differences between United Bank's lending and the aggregate lending for 2012 and 2013. In addition, in the United Bank Evaluation, the FDIC reported that it did not find evidence of discriminatory or other illegal credit practices. Old National represents that its fair lending program will be implemented across the combined organization.

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.

³⁸ The Board notes, however, that United Bank reported originating six refinance loans to African Americans in 2012, not two as stated by the commenter.

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 United'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 commercial customers.

Old National states that the proposal would provide customers with an expanded network of over 190 branches in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National notes that the combined organization would provide United Bank's customers with an expanded and more sophisticated range of products and services than United Bank currently offers, including an enhanced range of consumer services and deposit accounts. Further, insurance products will be made available to United Bank's customers through Old National Insurance, which offers a broad array of insurance products to individuals and businesses across the United States.

Conclusion on Convenience and Needs Consideration

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, its evaluation of the mortgage lending operations and compliance programs of Old National Bank and United Bank, its review of examination reports, and its consultations with other agencies, 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."³⁹

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.⁴⁰ 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

³⁹ 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).

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

that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.⁴¹

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 \$11.2 billion in consolidated assets and would be the 98th 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 constitute 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.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.⁴² 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.

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

⁴² 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.

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 St. Louis, acting pursuant to delegated authority.

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

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Section 4 of the Bank Holding Company Act

Chemical Financial Corporation
Midland, Michigan

Order Approving the Acquisition of a Savings Association, Merger of Depository Institutions, and Establishment of Branches
FRB Order No. 2014–16 (September 30, 2014)

Chemical Financial Corporation (“Chemical”), Midland, Michigan, a financial holding company within the meaning of the Bank Holding Company Act (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act¹ to acquire Northwestern Bancorp, Inc. (“Northwestern”), and its wholly owned subsidiary, Northwestern Bank, a state savings bank that has elected to be treated as a savings association for purposes of section 10(l) of the Home Owners’ Loan Act,² both of Traverse City, Michigan.

In addition, Chemical’s subsidiary state member bank, Chemical Bank, also of Midland, has requested the Board’s approval to merge with Northwestern Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”), with Chemical Bank as the surviving entity.³ Chemical Bank also has applied under section 9 of the Federal Reserve Act (“FRA”)⁴ to establish and operate 25 branches at the locations of Northwestern Bank’s main office and branches.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 23977 (Apr. 29, 2014)) and in accordance with the Bank Merger Act and the Board’s Rules of Procedure.⁵ As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General. The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act, the Bank Merger Act, and the FRA.

Chemical, with total consolidated assets of approximately \$6.2 billion, is the 154th largest depository organization in the United States, controlling deposits of approximately \$5.1 billion, which represent less than 1 percent of the total amount of deposits of insured

¹ 12 U.S.C. §§ 1843(c)(8) and (j).

² 12 U.S.C. § 1467a(l).

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

depository institutions in the United States.⁶ Chemical Bank operates branches only in Michigan and is the ninth largest insured depository institution in the state, with its deposits representing 2.9 percent of the total amount of deposits in insured depository institutions in Michigan.⁷

Northwestern, with total consolidated assets of approximately \$855 million, controls deposits of approximately \$758 million. Northwestern Bank operates branches only in Michigan and is the 25th largest insured depository institution in the state, with its deposits representing 0.5 percent of the total amount of deposits in insured depository institutions in Michigan.

On consummation of the proposal, Chemical would become the eighth largest depository organization in Michigan, controlling deposits of approximately \$5.9 billion, representing 3.3 percent of deposits in insured depository institutions in Michigan.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.⁸ The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4 of the BHC Act.⁹ Chemical has committed that all the activities of Northwestern and its nonbanking subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.¹⁰

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.¹¹ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.¹² In addi-

⁶ Nationwide deposit ranking data are as of December 31, 2013. Asset data are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, savings associations, and non-deposit trust companies.

⁷ State market share and ranking data are as of June 30, 2013.

⁸ 12 CFR 225.28(b)(4)(ii). Northwestern Bank meets the definition of “savings association” under the BHC Act, 12 U.S.C. § 1841(j)(3).

⁹ 12 CFR 225.28(b)(4)(ii).

¹⁰ The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 4 of the BHC Act to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of the target insured depository institution is a state other than the home state of the bank holding company and the applicant controls, or would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8). For purposes of the BHC Act, the home state of both Chemical and Northwestern Bank is Michigan 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 Chemical controlling less than 1 percent of the deposits of U.S. insured depository institutions.

¹¹ 12 U.S.C. § 1828(c)(5).

¹² 12 U.S.C. § 1828(c)(5)(B). In addition to assessing the competitive effects of the proposal, in every case under the Bank Merger Act, the Board must take into consideration the financial and managerial resources and future prospects of the existing and proposed institution, the convenience and needs of the community to be served, records of compliance with anti-money-laundering laws, and the risk to the stability of the United States banking or financial system. *Id.* at § 1828(c)(5).

tion, the Board must consider the competitive effects of a proposal to acquire a savings association under the public benefits factor of section 4(j) of the BHC Act.¹³

Chemical Bank and Northwestern Bank compete directly in the Michigan banking markets of Roscommon, Cadillac, and Gaylord.¹⁴ The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of the total deposits in insured depository institutions in the markets (“market deposits”) that Chemical Bank would control,¹⁵ 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”),¹⁶ and other characteristics of the markets.

The structural effects that consummation of the proposal would have in the Roscommon, Cadillac, and Gaylord banking markets warrant a detailed review because the concentration levels on consummation would exceed the threshold levels in the DOJ Bank Merger Guidelines. Based on initial competitive screening data, the increases in the markets’ HHIs would be, respectively, 232, 230, and 473 to levels of 2464, 2613, and 2407.

On review, it appears that two types of adjustments to the initial competitive screening data are warranted. First, the Board has evaluated the competitive influence of two thrift institutions (including Northwestern Bank) operating in the Roscommon, Cadillac, and Gay-

¹³ 12 U.S.C. § 1843(j)(2)(A). Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Northwestern 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.” Id. 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, records of compliance with anti-money-laundering laws, and the public benefits of the proposal. 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); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C138 (2006); *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997). In acting on a notice to acquire a savings association, the Board reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).

¹⁴ The Roscommon banking market is defined as Crawford County, Oscoda County, and Roscommon County, all of Michigan. The Cadillac banking market is defined as Missaukee County, Wexford County, and the northern half of Osceola County, including Burdell, Sherman, Highland, Marion, Le Roy, Rose Lake, Hartwick, and Middle Branch Townships, all of Michigan. The Gaylord banking market is defined as Otsego County and Montmorency County, excluding Hillman and Rust Townships, all of Michigan.

¹⁵ 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. The Board has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

¹⁶ 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 have issued revised Horizontal Merger Guidelines, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

lord banking markets.¹⁷ Each institution'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.¹⁸ Accordingly, the Board has concluded that deposits controlled by these institutions should be weighted at 100 percent in the market-share calculations.

Second, five community credit unions exert a competitive influence in the Roscommon, Cadillac, and Gaylord banking markets. Each institution 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 relevant banking market.¹⁹ Accordingly, the Board finds that these circumstances warrant including the deposits of these credit unions at a 50 percent weight in estimating market influence. This weighting takes account of the limited lending done by these credit unions to small businesses relative to banks' lending levels.

These two types of adjustments suggest that the resulting market concentration of the proposed transaction in all these markets is less significant than would appear from the measurements focused on commercial bank competitors. In particular, with these two adjustments to reflect competition by other insured depository institutions in the market, the market concentration levels in the Roscommon, Cadillac, and Gaylord banking markets as measured by the HHI would increase by 261, 329, and 403 to levels of 1909, 2338, and 1914, respectively, and the market shares of Chemical resulting from the transaction would increase in these markets from 20.4, 21.4, and 13.6 percent to 26.8, 29.1, and 28.4 percent, respectively.

The Board also has considered whether other factors mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the Roscommon, Cadillac, and Gaylord banking markets. The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase and the resulting level of concentration in a banking market.²⁰ In each market, the record indicates that the proposal is not likely to have a significantly adverse impact on competition.

¹⁷ The standard treatment of thrifts in the competitive analysis is to give their deposits 50 percent weighting to reflect their limited lending to small businesses relative to banks' lending levels. However, 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*.

¹⁸ These thrift institutions each have a ratio of commercial and industrial loans to assets of more than 5 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.

¹⁹ The Board previously has considered competition from certain active credit unions with these 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).

²⁰ See *NationsBank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

Roscommon Banking Market. In the Roscommon banking market, the HHI effects of the transaction would exceed the DOJ Guidelines by a modest amount.²¹ Chemical would remain the second largest competitor with a 26.8 percent deposit market share. The Roscommon banking market exhibits a balanced market structure, with eight other competitively active insured depository institutions remaining, three of which would continue to each hold greater than 9 percent of deposit market share, including the market's largest participant with 28.7 percent of market deposits. The presence of viable competitors suggests that Chemical would have limited ability to unilaterally offer less attractive terms to consumers.

Cadillac Banking Market. In the Cadillac banking market, Chemical would remain the second largest competitor with a 29.1 percent deposit market share. However, eight other competitively active insured depository institutions would remain, three of which would continue to each hold greater than 9 percent of deposit market share. The Cadillac banking market has experienced a substantial decrease in market concentration in recent years, with the HHI declining by 572 points over the last five years. In addition, recent entry and expansionary activity suggests that the market is attractive to potential competitors. One bank entered the market de novo in 2012, and an existing competitor opened a new branch in 2011.

Gaylord Banking Market. In the Gaylord banking market, Chemical would become the largest competitor with a 28.4 percent deposit market share. However, seven other competitively active insured depository institutions would remain, four of which would continue to each hold greater than 11 percent of deposit market share. The Gaylord banking market has experienced a substantial decrease in market concentration in recent years, with the HHI declining by 284 points over the last five years. In addition, recent entry and expansionary activity suggests that the market may be attractive to potential competitors. One bank entered the market de novo in 2012, and a credit union competitor currently has a new branch under construction to be opened in 2014.

Other Factors and Conclusion Regarding Competitive Factors

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

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 Roscommon, Cadillac, and Gaylord banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

²¹ An additional assessment of the transaction, based on competitors' shares of the total number of branches in the market, also supports the view that the structural effects of the transaction would not substantially lessen competition. Branches are one way banks attract customers and are able to provide services to customers throughout the market (see, for example, Robert M. Adams, Kenneth P. Brevoort, and Elizabeth K. Kiser (2007), "Who Competes with Whom? The Case of Depository Institutions," *Journal of Industrial Economics*, vol. 55, no. 1, pp. 141-167; Astrid Dick (2008), "Demand Estimation and Consumer Welfare in the Banking Industry," *Journal of Banking and Finance*, vol. 32, no. 8, pp. 1661-1676; and Katherine Ho and Joy Ishii (2011), "Location and Competition in Retail Banking," *International Journal of Industrial Organization*, vol. 29, no. 5, pp. 537-546.). The change in the pro forma branch HHI, defined as the sum of the squared branch share for each institution in the market (where the branch share is defined as an institution's number of branches in the market divided by the total number of branches in the market), in the Roscommon market would be 200 points to a level of 1538, assuming a 50 percent weight for credit union branches.

Financial, Managerial, and Other Supervisory Factors

In reviewing this proposal under section 4 of the BHC Act, the Bank Merger Act, and the FRA, the Board has considered the financial and managerial resources and future prospects of the institutions involved. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board considers 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 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.

Chemical and Chemical Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash purchase of shares, and the total consideration for the transaction would be approximately \$120 million. Chemical expects to fund the transaction with its investments and cash-equivalents on hand. The asset quality, earnings, and liquidity of Chemical are consistent with approval, and Chemical appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Chemical Bank's and Northwestern Bank's operations. Future prospects are considered consistent with approval. Based on its review of the record, the Board finds that Chemical has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and has reviewed the examination records of Chemical and Chemical Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its and other relevant financial supervisory agencies' supervisory experiences with the organizations and the organizations' records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Chemical's plans for implementing the proposal. Chemical and Chemical Bank are considered to be well managed, and their boards of directors and senior management have significant banking experience. Chemical would operate the acquired branches of Northwestern Bank under Chemical's existing policies and procedures, which are considered to be satisfactory. In addition, Chemical's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the records of effectiveness of Chemical and Chemical Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under the Bank Merger Act, the Board must consider the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.²² As noted, the Board also must review the records of performance under the CRA of the relevant insured depository institutions when acting on a notice under section 4 of the BHC Act to acquire a savings association. The CRA requires the federal financial supervisory agencies to encourage insured deposi-

²² 12 U.S.C. § 2901 *et seq.*

tory institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²³ 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.²⁴

The Board has considered all the facts of record, including reports of examination of the CRA performance of Chemical Bank and Northwestern Bank, information provided by Chemical, and confidential supervisory information.

A. Record 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.²⁵ 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.²⁶ 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 Chemical Bank. Chemical Bank was assigned an overall "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago ("Reserve Bank") in August 2013 ("Chemical Bank Evaluation").²⁷ Chemical Bank received "outstanding" ratings for the Lending Test, the Investment Test, and the Service Test.²⁸

In evaluating the Lending Test, Reserve Bank examiners noted that the bank originated a substantial majority of loans within its assessment areas and showed excellent responsiveness to credit needs throughout its assessment areas. Examiners noted that the bank had an excellent record of serving the credit needs of very small businesses. Further, Chemical Bank's geographic distribution of loans reflected excellent penetration throughout the assessment areas. Examiners also noted that Chemical Bank is a leader in making community development loans inside its assessment areas and uses flexible and innovative lending practices in serving assessment area needs. Examiners noted that the dollar amount of Chemical Bank's lending increased by approximately 11.0 percent from the prior evaluation.

In evaluating the Investment Test, Reserve Bank examiners found that Chemical Bank had provided an excellent level of qualified investments, donations, and grants. The examiners

²³ 12 U.S.C. § 2901(b).

²⁴ 12 U.S.C. § 2903.

²⁵ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

²⁶ 12 U.S.C. § 2906.

²⁷ The Chemical Bank Evaluation reviewed home mortgage and small business lending data from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was July 1, 2011, through August 26, 2013.

²⁸ The Chemical Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The Chemical Bank Evaluation included a full-scope review of five assessment areas: the Grand Rapids-Wyoming Metropolitan Statistical Area ("MSA"); the Niles-Benton Harbor MSA; the Bay City MSA; the Kalamazoo-Portage MSA; and the North Central-Non-MSA. A limited-scope review was performed in the Battle Creek MSA; the Flint MSA; the Holland-Grand Haven MSA; the Saginaw-Saginaw Township North MSA; the South Bend-Mishawaka (Multi-State) MSA (Cass County, Michigan, only); the East-Non-MSA; the South-Non-MSA; and the West-Non-MSA.

noted that the bank demonstrated excellent responsiveness to credit and community development needs. The bank also made extensive use of innovative and complex investments to support community development initiatives. Examiners noted that Chemical Bank's CRA-qualified investments increased by approximately 32.9 percent in number and 50.5 percent in dollars from the prior evaluation.

In evaluating the Service Test, examiners noted that Chemical Bank's branch location changes had improved the accessibility of its delivery systems, particularly to LMI geographies and LMI individuals. Examiners also found that the bank's delivery systems were readily accessible to the bank's geographies and individuals of different income levels in the assessment area. Further, examiners highlighted that Chemical Bank was a leader in providing community development services throughout its assessment areas.

CRA Performance of Northwestern Bank. Northwestern Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation in April 2014 ("Northwestern Bank Evaluation"), with ratings of "satisfactory" for the Lending Test and the Community Development Test.²⁹

In evaluating the Lending Test, examiners noted that the bank originated a substantial majority of loans within its assessment area.³⁰ Examiners also found that the bank's geographic dispersion of loans reflected reasonable dispersion throughout its assessment area, and the bank's distribution of loans to borrowers reflected reasonable penetration to businesses of different sizes and among individuals of different income levels. Further, examiners concluded that Northwestern Bank's loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs.

In evaluating the Community Development Test, examiners noted that Northwestern Bank's level of community development performance demonstrated adequate responsiveness to the community development needs of its assessment area through qualified loans, investments, and services, considering its capacity and the need for such activities in its assessment area. Examiners also noted that Northwestern Bank did not receive any complaints about its performance in meeting assessment area credit needs.

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.

As discussed more fully below, the proposed transaction would provide Northwestern Bank's customers with a larger network of branches and ATMs for customers to conveniently access, a broader array of banking products and services, and higher legal lending limits. Chemical further represents that the combined organization will offer a wider variety of products and services that are tailored to meet the needs of LMI geographies and indi-

²⁹ The Northwestern Bank Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. The Lending Test included a review of home mortgage loans and small business loans for the period of January 1, 2012, to December 31, 2013. The Community Development Test was evaluated from a review of community development loans, investments, and service activities since Northwestern Bank's last CRA evaluation on April 1, 2011. The Northwestern Bank Evaluation reflected the activities of both Northwestern Bank and its affiliated mortgage company, Northwestern Mortgage Company. Northwestern Bank is not a reporter as defined under the Home Mortgage Disclosure Act because it does not have any offices within a MSA.

³⁰ Northwestern Bank has one designated assessment area, comprised of 14 counties within Michigan, including Emmet, Charlevoix, Otsego, Antrim, Crawford, Roscommon, Kalkaska, Missaukee, Grand Traverse, Leelanau, Benzie, Wexford, Manistee, and Mason, all of which are within nonmetropolitan areas.

viduals. Although Chemical plans to close one Northwestern Bank branch following the merger and to consolidate three others with nearby Chemical Bank branches, Northwestern Bank customers nevertheless would benefit from having a larger network of banking offices throughout Michigan.

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 Chemical, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Chemical Bank and Northwestern 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 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, and as a factor that must be considered under section 18(c) of the Bank Merger Act.³¹

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.³² 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.³³

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, Chemical would have approximately \$7.0 billion in consolidated assets and would be the 134th largest financial institution in the United States as measured by assets. 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. Chemical engages in and

³¹ Dodd-Frank Act, § 604(e) and (f), codified at 12 U.S.C. §§ 1843(j)(2)(A) and 1828(c)(5). 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) of the Dodd-Frank Act.

³² Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

³³ For further discussion of the financial stability standard, see *Capital One Order*.

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, Chemical's intrafinancial system assets and liabilities would comprise a negligible share of the system-wide total, both before and after the transaction, and the resulting organization 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.

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."³⁴

The Board has considered that the proposal would allow Chemical Bank to expand the range of financial products and services available to existing customers of Northwestern Bank. Chemical represents that the merger would enhance the ability of the combined entities to employ capital where it may be best utilized, to continue and expand the services presently provided to their respective customers, and to respond to changing market conditions and community needs. Chemical represents that the proposed transaction would provide Northwestern Bank's customers with a broader array of banking products and services offered by Chemical Bank, including portfolio mortgage loans, consumer loans, commercial and industrial loans, and treasury management products. Chemical also states that the combined organization would have higher legal lending limits than either Chemical Bank or Northwestern Bank. In addition, customers of both institutions would benefit from a more expansive branch and ATM network. 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 interests, 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.

³⁴ 12 U.S.C. §1843(j)(2).

Establishment of Branches

As noted, Chemical Bank has applied under section 9 of the FRA to establish branches at the current locations of Northwestern Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.³⁵ Specifically, the Board has considered Chemical Bank's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the notice and 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, and the FRA. Approval of the notice and applications is specifically conditioned on compliance by Chemical with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are deemed to be conditions imposed in writing by the Board and, as such, may be enforced in proceedings under applicable law.

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

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

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Michigan Branches to be Acquired

Acme

1. 5300 US Highway 31 North

Cadillac

2. 1573 North Mitchell Street
3. 150 Granite Street

Charlevoix

4. 1425 Bridge Street

Elk Rapids

5. 97 River Street

³⁵ 12 U.S.C. § 322; 12 CFR 208.6.

Gaylord

6. 711 West Main Street
7. 2091 South Ostego Avenue

Houghton Lake

8. 5213 West Houghton Lake Drive

Interlochen

9. 2112 M-137

Kalkaska

10. 112 South Cedar Street

Kingsley

11. 111 North Brownson Avenue

Leland

12. 115 North Main Street

Ludington

13. 101 East Court Street
14. 3965 West US Highway 10

Manistee

15. 325 First Street

Petoskey

16. 300 Howard Street
17. 919 Spring Street

Suttons Bay

18. 105 West Fourth Street
19. 212 North Saint Joseph Street

Traverse City

20. 625 South Garfield Traverse City
21. 107 East Front Street
22. 613 West Fourteenth St.
23. 4205 US Highway 31 South
24. 203 Union Street
25. 13936 South West Bay Shore Drive

Order Issued Under Bank Merger Act

ANB Bank

Denver, Colorado

Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2014-14 (September 11, 2014)

ANB Bank (“ANB”), Denver, Colorado,¹ a state member bank, has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act² (“Bank Merger Act”) to merge with Capital West Bank (“CW Bank”), Laramie, Wyoming.³ In addition, ANB has applied under section 9 of the Federal Reserve Act (“FRA”)⁴ to establish and operate branches at the locations of CW Bank.

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

ANB, with total assets of approximately \$2.1 billion, operates in Colorado, Wyoming, Kansas, and Missouri. ANB is the 17th largest insured depository institution in Colorado, controlling deposits of approximately \$1.2 billion, which represent 1.1 percent of the total amount of deposits in insured depository institutions in the state (“state deposits”).⁶ ANB is the 11th largest insured depository institution in Wyoming, controlling deposits of approximately \$359.8 million, which represent 2.7 percent of the total amount of state deposits.

CW Bank, with total assets of approximately \$162 million, operates in Colorado and Wyoming. CW Bank is the 137th largest insured depository institution in Colorado, controlling deposits of approximately \$18.6 million, which represent less than 1 percent of the total amount of state deposits. CW Bank is the 25th largest insured depository institution in Wyoming, controlling deposits of approximately \$122.8 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, ANB would remain the 17th largest insured depository institution in Colorado, controlling deposits of approximately \$1.2 billion, representing 1.1 percent of the total amount of state deposits. ANB would become the eighth largest insured depository institution in Wyoming, controlling deposits of approximately \$482.6 million, representing 3.6 percent of the total amount of state deposits.

¹ ANB is a subsidiary of Sturm Financial Group, Inc. (“SFG”), a bank holding company, also of Denver, Colorado.

² 12 U.S.C. § 1828(c).

³ CW Bank is a subsidiary of First Capital West Bankshares, Inc. (“CW Bankshares”), a bank holding company, also of Laramie, Wyoming.

⁴ 12 U.S.C. § 321. These branches are listed in the appendix.

⁵ 12 CFR 262.3(b).

⁶ Asset data are as of June 30, 2014. Deposit data and state rankings are as of June 30, 2013. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

Interstate Analysis

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal Act”) authorizes a bank to merge with a bank located in another state under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.⁷ For purposes of the Riegle-Neal Act, the home state of ANB is Colorado, and the home state of CW Bank is Wyoming.⁸ ANB has provided a copy of its Bank Merger Act application to the relevant state agency and has complied with state law. The proposal also complies with all other requirements of the Riegle-Neal Act.⁹ Accordingly, the Riegle-Neal Act does not prohibit this interstate branch acquisition.

Competitive Considerations

The Bank Merger Act prohibits the Board from approving an application if the proposal would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking.¹⁰ The Bank Merger Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any relevant market, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effects of the transaction in meeting the convenience and needs of communities to be served.¹¹

ANB and CW Bank compete directly in the Wyoming banking markets of Cheyenne and Laramie.¹² The Board has reviewed the competitive effects of the proposal in those banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative share of the total deposits in insured depository institutions in the market (“market deposits”) that ANB would control,¹³ 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”),¹⁴ and other characteristics of the markets.

⁷ 12 U.S.C. § 1831u.

⁸ See 12 U.S.C. § 1831u(a)(4) and (g)(4).

⁹ See 12 U.S.C. § 1831u. As required by the Riegle-Neal Act, ANB and CW Bank are both at least adequately capitalized (as defined in 12 U.S.C. § 1831o(b)(1)(B)), and the resulting bank would be well capitalized and well managed on consummation of the transaction. The Colorado Division of Banking has indicated that this transaction would comply with applicable Colorado law, and the Wyoming Division of Banking has indicated that this transaction would comply with applicable Wyoming law. See WYO. STAT. 13-2-804, 805. On consummation of the proposal, ANB would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Wyoming. See 12 U.S.C. § 1831u(b)(2)(A) and (B)(ii). All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

¹⁰ 12 U.S.C. § 1828(c)(5)(A).

¹¹ 12 U.S.C. § 1828(c)(5)(B).

¹² The Cheyenne banking market is defined as the Cheyenne Rationally Metropolitan Area (“RMA”) and the non-RMA portion of Laramie County, both in Wyoming. The Laramie banking market is defined as Albany County, Wyoming.

¹³ Deposit and market share data are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation’s 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 has previously indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 53 (1991).

¹⁴ 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

In the Cheyenne banking market, consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines. On consummation of the proposal, the Cheyenne banking market would remain moderately concentrated, as measured by the HHI, and numerous competitors would remain in the banking market.¹⁵

In the Laramie banking market, ANB is the third largest insured depository institution, controlling deposits of approximately \$45.3 million, which represent approximately 8.6 percent of market deposits. CW Bank is the second largest insured depository institution in the market, controlling deposits of approximately \$73.3 million, which represent approximately 13.9 percent of market deposits. On consummation of the proposal, ANB would become the second largest depository institution in the Laramie banking market, controlling deposits of approximately \$118.6 million. When the initial competitive screening data are used, the combined entity would represent 22.4 percent of market deposits and the HHI would increase by 238 points, from 3086 to 3324.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on competition in the market.¹⁶ In particular, the Board considered the competitive influence of three active community credit unions in the Laramie banking market. All three credit unions offer a wide variety of products, operate at least one street-level branch, and have either open membership or broad membership criteria that include most of the residents in the Laramie banking market.¹⁷ These credit unions control approximately \$283.8 million in market deposits, which represent approximately 21 percent of market deposits on a 50 percent weighted basis. With these deposits weighted at 50 percent, after consummation ANB would control approximately 17.7 percent of market deposits, and the HHI would increase by 147 points, from 2186 to 2333. Furthermore, on consummation a total of 10 competitors would continue to operate in the market, including the three credit unions and the market's largest competitor, First Interstate Bank, with approximately 40.7 percent of market deposits.¹⁸ The Board has concluded that these factors mitigate the potential effects of the proposal.

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

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

¹⁵ In the Cheyenne banking market, ANB operates the second largest insured depository institution, controlling deposits of approximately \$185.6 million, which represent 13.6 percent of market deposits. CW Bank operates the ninth largest insured depository institution, controlling deposits of approximately \$49.5 million, which represent 3.6 percent of market deposits. After consummation, ANB would remain the second largest insured depository institution in the market, controlling deposits of approximately \$235.2 million, which represent 17.2 percent of market deposits. The HHI would increase by 99 points, from 1082 to 1181. On consummation of the proposal, a total of 19 competitors would remain in the market.

¹⁶ 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).

¹⁷ The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. See, e.g., *River Valley Bancorp*, FRB Order No. 2012-10 (October 17, 2012); *The Hancock Holding Company*, 97 *Federal Reserve Bulletin* 49 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007).

¹⁸ This percentage reflects the inclusion of the three credit unions on a 50 percent weighted basis.

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 Cheyenne or Laramie banking markets, or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

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

ANB is well capitalized and would remain so on consummation of the proposal. CW Bank would be merged into ANB.¹⁹ The asset quality, earnings, and liquidity of ANB are consistent with approval, and ANB appears to have adequate resources to absorb the costs of the proposal and to complete the integration of ANB's and CW Bank's operations. Future prospects are considered 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 ANB and has reviewed the examination records of ANB, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and ANB's record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered ANB's plans for implementing the proposal. ANB is considered to be well managed, and its board of directors and senior management have substantial banking experience. ANB would operate the acquired branches of CW Bank under its existing policies and procedures, which are considered to be satisfactory. In addition, ANB's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of ANB, as well as the records of effectiveness of ANB and CW Bank in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal 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 Reinvest-

¹⁹ Simultaneously with the bank merger, SFG and CW Bankshares would merge. The transaction is structured as a cash purchase of shares, which SFG will fund from cash on hand. With respect to the merger of the bank holding companies, SFG requested a waiver of the application requirement under section 3 of the Bank Holding Company Act of 1956, as amended, pursuant to section 225.12(d)(2) of the Board's Regulation Y. The Board has approved the waiver request.

ment Act (“CRA”).²⁰ The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account an institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank merger proposals.

The Board has considered all the facts of record, including reports of examination of the CRA performance of ANB and CW Bank, information provided by ANB, and confidential supervisory information.

A. Record 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.²¹ 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.²² 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 ANB. ANB received an overall rating of “satisfactory” at its most recent CRA performance examination by the Federal Reserve Bank of Kansas City (“Reserve Bank”), in January 2013 (“ANB Evaluation”). ANB received “low satisfactory” ratings on the Lending Test and the Service Test, and an “outstanding” rating on the Investment Test.²³

In evaluating the Lending Test, examiners found that the bank’s lending activities showed adequate responsiveness to the credit needs in its assessment areas, because the bank originated a high percentage of loans inside its assessment areas. Examiners noted that geographic and borrower distribution reflected a good penetration in its assessment areas and an adequate penetration among borrowers of different income levels and businesses and farms of different revenue sizes. Examiners noted that ANB’s level of community development lending was adequate, with a total of seven loans originated, totaling approximately \$2.4 million.

In evaluating the Investment Test, examiners believed that the amount of investments and donations made in Colorado was excellent and the amount made in Wyoming was adequate. In particular, examiners found that ANB was instrumental in providing investment funds to revitalize and stabilize moderate-income tracts located in downtown Grand Junction, Colorado.

²⁰ 12 U.S.C. § 2901 *et seq.*

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

²² 12 U.S.C. § 2906.

²³ The evaluation period was from July 1, 2010, through December 31, 2011. The ANB Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation included full-scope reviews of the Denver-Aurora-Broomfield, Colorado Metropolitan Statistical Area (“MSA”); the Colorado Springs, Colorado MSA; and the Cheyenne, Wyoming MSA. Limited-scope reviews were performed in the nonmetropolitan Mountain Assessment Area (“AA”) (including Eagle, Garfield, and Pitkin counties, all in Colorado); the Grand Junction, Colorado MSA; the Boulder, Colorado MSA; the San Miguel County, Colorado AA; the Northern Wyoming AA; the Casper, Wyoming MSA; and the Albany County, Wyoming AA. Examiners placed greater weight on the bank’s performance in Colorado because of the concentration of the bank’s loans, deposits, and branch locations in that state.

In evaluating the Service Test, examiners found that ANB provided an adequate level of community development services in its assessment areas. The bank's branch locations and alternative delivery systems, such as ATMs and drive-through banking facilities, were accessible to the bank's various geographies and to individuals of different income levels in each assessment area. The bank's services and hours did not vary in a way that inconvenienced any of the needs in its assessment areas, particularly of LMI individuals and in its various geographies.

CRA Performance of CW Bank. CW Bank received an overall rating of "satisfactory" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, in May 2012 ("CW Bank Evaluation").²⁴ Examiners found that CW Bank's loan-to-deposit ratio was reasonable given the bank's performance context and strong competition in its assessment areas and that a substantial majority of its loans were inside its assessment areas. Examiners concluded that the bank's lending within its assessment areas exceeded the standard for satisfactory performance and was reasonable.

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.

ANB represents that the proposed transaction would provide CW Bank's customers with a broader network of branches, enhanced products and services, and expanded financial resources and lending capacity. In addition, the merger would provide increased efficiencies and other savings, particularly in areas of strategic planning, data processing, and marketing. ANB plans to close CW Bank's branch in Laramie, Wyoming, and consolidate CW Bank's branch in Cheyenne, Wyoming, into ANB's branch located less than 1,000 feet away.²⁵ CW Bank customers will continue to have access to banking services in each of the communities currently served by CW Bank.

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 ANB, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of ANB and CW 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.

²⁴ The CW Bank Evaluation was conducted using Small Bank CRA Examination Procedures, and examiners reviewed the bank's commercial business and residential real estate lending activity from July 1, 2007, through March 26, 2012. The CW Bank Evaluation reviewed the bank's Albany County, Wyoming AA; the Cheyenne, Wyoming MSA; and the Fort Collins-Loveland, Colorado MSA.

²⁵ ANB represents that the closing of the Laramie, Wyoming branch will be completed in accordance with the bank's branch closing policy and applicable laws and regulations.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Bank Merger Act to require the Board to consider a merger proposal’s “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, ANB would have approximately \$2.2 billion in consolidated assets and would be outside the top 100 largest financial institutions 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. ANB would continue to engage in traditional commercial banking activities. The resulting organization would only experience very small increases in the metrics that the Board considers to measure an institution’s complexity and interconnectedness, with the resulting firm ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, ANB’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.

²⁶ Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1828(c)(5).

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).

Establishment of Branches

ANB has applied under section 9 of the FRA to establish branches at the current locations of CW Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.²⁹ Specifically, the Board has considered ANB's financial condition, management, capital, actions in meeting the convenience and needs of the communities to be served, CRA performance, and investment in bank premises. For the reasons discussed in this order, the Board finds those factors to be consistent with approval.

Conclusion

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

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

By order of the Board of Governors, effective September 11, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Appendix

Branches to Be Established by ANB 2015 Central Avenue

Cheyenne, Wyoming 82001

2108 Milestone Drive

Fort Collins, Colorado 80525

2020 Grand Avenue

Laramie, Wyoming 82070

²⁹ 12 U.S.C. § 322; 12 CFR 208.6.

Order Issued Under Federal Reserve Act

Regions Bank
Birmingham, Alabama

*Order Approving Establishment of a Branch
FRB Order No. 2014–15 (September 26, 2014)*

Regions Bank, a state member bank subsidiary of Regions Financial Corporation, both of Birmingham, Alabama, has requested the Board's approval under section 9 of the Federal Reserve Act ("Act")¹ and the Board's Regulation H² to establish a branch at the intersection of West Lake Houston Parkway and Magnolia Cove (Kings Harbor Development) in Kingwood, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.³ The time for filing comments has expired, and the Board has considered the notice and all comments received in light of the factors specified in the Act.

Regions Bank is the 17th largest depository institution in Texas with 81 branches, controlling approximately \$3.7 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in the state.⁴ Regions Bank's main office is in Birmingham, and it operates 238 additional branches in Alabama. Regions Bank operates a total of 1,673 branches in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Under the Board's Regulation H, which implements section 9 of the Act,⁵ the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");⁶ and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.⁷

The Board has considered the application in light of these factors and public comment received on the proposal. A commenter objected to the proposal and alleged that Regions Bank discriminates against African Americans and redlines African American neighbor-

¹ 12 U.S.C. § 321 *et seq.*

² 12 CFR Pt. 208.

³ 12 CFR 262.3(b).

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

⁵ 12 CFR 208.6(b).

⁶ 12 U.S.C. § 2901 *et seq.*

⁷ Section 9 of the Act, 12 U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(e), provides that a state member bank may not establish a branch in any state other than the bank's home state or a state in which the bank already operates a branch, except under certain specified conditions. See 12 U.S.C. § 1831u(d)(2) and Tex. Fin. Code Ann. § 203.006 (stating that an out-of-state bank that has established a branch in Texas may establish additional branches in the state to the same extent that a Texas state bank may establish a branch in Texas). Regions Bank currently operates branches in Texas. See *Regions Financial Corporation*, 84 *Federal Reserve Bulletin* 558 (1998).

hoods, particularly in the Houston, Texas Metropolitan Statistical Area (“Houston MSA”), with respect to its branching, marketing, and lending activities.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Regions Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Regions Bank, and the comment received. Regions Bank is well capitalized and would remain so on consummation of the proposal. After considering all the facts of record, including Regions Bank’s proposed investment in the Kingwood branch, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Regions Bank are consistent with approval of the proposal.

In considering Regions Bank’s managerial resources, the Board has reviewed the bank’s examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Regions Bank and the bank’s record of compliance with applicable banking law, including anti-money-laundering laws. Regions Bank is considered to be well managed. Based on this review and all the facts of record, the Board has concluded that the character of Regions Bank’s management, as well as the records of effectiveness of Regions Bank in combatting money laundering activities, are consistent with approval of the proposal.⁸

Convenience and Needs Considerations

The Board also has considered the convenience and needs of the community to be served, taking into account the comment received and the bank’s 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 their safe and sound operation,⁹ 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.¹⁰

The Board has considered all the facts of record, including reports of examination of the CRA performance of Regions Bank, data reported by Regions Bank under the Home Mortgage Disclosure Act (“HMDA”),¹¹ other information provided by Regions Bank, confidential supervisory information, and the public comment received on the proposal.

A. Record 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

⁸ The Board and the Alabama State Banking Department have entered into a Consent Order with Regions Bank related to misconduct involving the process followed by the bank in the first quarter of 2009 for identifying and reporting non-accrual loans and the bank’s response to a targeted examination of these processes undertaken by the Board and the Alabama State Banking Department in 2009. The Consent Order acknowledges that Regions Bank has made improvements in developing its risk-management program and its internal controls. The Consent Order requires Regions Bank to continue to improve its relevant policies, practices, controls, and procedures. In considering this proposal, the Board took account of the current and continuing progress made by Regions Bank in complying with the provisions of the Consent Order.

⁹ 12 U.S.C. § 2901(b).

¹⁰ 12 U.S.C. § 2903.

¹¹ 12 U.S.C. § 2801 *et seq.*

the relevant institutions.¹² 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.¹³ 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.

Regions Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank") in September 2012 ("Regions Bank Evaluation"). Regions Bank received "high satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.¹⁴ In addition to the overall "satisfactory" rating that Regions Bank received, the bank received separate overall "outstanding" or "satisfactory" ratings in the overwhelming majority of the multistate metropolitan areas and states reviewed.¹⁵ In Texas, Regions Bank received an overall "satisfactory" rating, "low satisfactory" rating for the Lending Test, an "outstanding" rating for the Investment Test, and a "low satisfactory" rating for the Service Test.

As described in the Regions Bank Evaluation, Reserve Bank examiners found that the bank's overall lending activity in the assessment areas was good and reflected good responsiveness to the assessment areas' credit needs. Examiners noted that the bank had a good record of lending to borrowers of different income levels, and that its distribution of loans to businesses and farms of different sizes was good. Further, examiners found that Region Bank's overall geographic distribution of loans was good and that the bank's geographic distribution of home mortgage and small business lending in LMI geographies was adequate. In addition, examiners found no evidence of discriminatory or other illegal credit practices.

Examiners noted that Regions Bank made a relatively high level of community development loans. During the evaluation period, the bank originated or renewed 680 community development loans. These loans were for a variety of purposes, including the financing of affordable housing for LMI individuals, community services targeted to LMI populations, promotion of economic development by financing small businesses, and revitalization of targeted communities located in LMI tracts or other qualified geographies.

In evaluating Regions Bank's performance under the Investment Test, examiners highlighted Regions Bank's qualified investments, investments in affordable housing, and grants and donations in the assessment areas. During the evaluation period, Regions Bank supported 662 qualified investments within its assessment areas. Examiners highlighted that Regions Bank is a leader in financing affordable multifamily housing through the Low

¹² See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

¹³ 12 U.S.C. § 2906.

¹⁴ The Regions 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, 2011, except for community development loans, which had an evaluation period from July 1, 2010, through June 30, 2012. The evaluation period for both the Investment Test and the Service Test was from July 1, 2010, through June 30, 2012.

¹⁵ The Regions Bank Evaluation included a review of 155 of Regions Bank's assessment areas, including a full-scope review of 40 of these assessment areas. The Regions Bank Evaluation included a full-scope review of at least one assessment area within each state where Regions Bank had an office and of multistate metropolitan areas where Regions Bank operated branches in at least two states. The states reviewed were Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas; and the multistate metropolitan areas reviewed were the Augusta (Georgia-South Carolina), Chattanooga (Tennessee-Georgia), Columbus (Georgia-Alabama), Kingsport (Tennessee-Virginia), Memphis (Tennessee-Mississippi-Arkansas), St. Louis (Illinois-Missouri), and Texarkana (Arizona-Texas) metropolitan areas.

Income Housing Tax Credits ("LIHTCs") program. In addition, Regions made qualified grants and donations to community development organizations. The majority of the donations provided support for organizations engaged in providing community services to LMI individuals or communities and for economic development.

In evaluating Regions Bank's performance under the Service Test, examiners noted that branches were accessible to geographies and individuals of different income levels. Examiners also noted that Regions Bank's opening and closing of branches had generally not adversely affected the accessibility of its banking services to LMI geographies. Further, examiners highlighted that Regions Bank provided a good level of community development services throughout its assessment areas.

Regions Bank's Efforts Since the 2012 CRA Evaluation. Regions Bank represents that since the Regions Bank Evaluation, it has continued its community development activities, including lending, investments, contributions, and services, in its combined assessment areas and in the Houston MSA assessment area. For instance, the bank represents that it has made community development loans in the Houston MSA assessment area that provided funding for affordable multifamily housing, charter school construction in underserved communities, and other small business ventures accessible to underserved communities. According to Regions Bank, it also offered a suite of financial management products and services targeted to unbanked and under-banked populations, including check cashing services, money transfer and expedited bill pay services, money orders, prepaid debit cards, savings accounts, mobile deposit services, small-dollar secured loans, and free online financial education.

B. Fair Lending and Other Consumer Protection Laws

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

HMDA Data, and Fair Lending Analysis. A commenter alleged that Regions Bank discriminates against African American individuals, African American-owned businesses, and African American neighborhoods in the Houston MSA, and that the bank has engaged in redlining with respect to its provision of banking products and services in the Houston MSA.

The Board analyzed Regions Bank's HMDA data from 2012 and 2013 for its combined assessment areas and its assessment area in the Houston MSA, which includes the specific market areas addressed in the public comment, related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns. The Board also analyzed the subset of those data related specifically to the loan products that were the subject of the public comment received on the proposal, home mortgage loans, home improvement loans, and small business loans. Within those data sets, the Board focused its review on data related to home mortgage loans, home improvement loans, and small business loans made or denied to borrowers and locations identified in the public comment, i.e., African American individuals, African American-owned businesses, and African Americans neighborhoods.

The Board is concerned when HMDA data for an institution indicate lending disparities. 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 the bank excluded or denied credit to any group on a prohibited basis.¹⁶ Fully evaluating a 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.

The data for 2012 and 2013 reveal that, in its combined assessment areas, Regions Bank's percentage of mortgage originations to African Americans and to borrowers in LMI census tracts was more favorable than that of the aggregate of all lenders. However, Regions Bank lagged in the percentage of its originations to borrowers in minority census tracts in its combined assessment areas. In the Houston MSA, Regions Bank's percentage of mortgage originations to African Americans, to borrowers in minority census tracts, and to borrowers in LMI census tracts was more favorable than that of the aggregate of all lenders during this period.

For home improvement loans in its combined assessment areas, Regions Bank exceeded the aggregate in its lending to African Americans, to borrowers in minority census tracts, and to borrowers in LMI census tracts in 2012 and 2013. For home improvement loans in its Houston MSA assessment area in 2012, Regions Bank was consistent with the aggregate in its percentage of loans to African Americans and to borrowers in LMI census tracts, but exceeded the aggregate in its percentage of such loans to borrowers in minority census tracts. In 2013, the bank exceeded the aggregate for loans to African Americans in its Houston MSA assessment area, but lagged the aggregate for loans to borrowers in minority census tracts and to borrowers in LMI census tracts.

The Board also reviewed Regions Bank's small business lending in its combined assessment areas and in the Houston MSA assessment area for 2012 and 2013. The data reveal that the bank made small business loans available in areas in which the majority of residents are African American. Regions Bank's small business loan originations in minority census tracts and LMI census tracts in the bank's combined assessment areas was approximately comparable to the aggregate in 2012 and 2013. In 2013, Regions Bank lagged the aggregate in small business lending in minority census tracts in the Houston MSA assessment area, but exceeded the aggregate in small business lending in LMI census tracts.

In addition, the Board performed a redlining analysis of Regions Bank's lending data, geographic distribution of branches, and marketing and outreach efforts. The Board analyzed Regions Bank's lending in minority census tracts and in census tracts in which African Americans represented the majority of the population. The data do not reveal that Regions Bank was redlining either minority census tracts or predominately African American census tracts in its lending activity.

The percentage of Regions Bank branches in LMI census tracts in the bank's combined assessment areas is slightly lower than the percentage of LMI census tracts in the bank's combined assessment areas. In addition, Regions Bank's percentage of branches in LMI census tracts approximates those of its peers. Because there is substantial overlap

¹⁶ 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.

between minority census tracts and LMI census tracts in the Houston MSA assessment area, Regions Bank's branches located in LMI census tracts are available to serve census tracts with concentrations of minority residents. Further, the Board reviewed a sample of Regions Bank's advertising and marketing materials and found that the bank includes marketing and outreach activities targeted at a variety of minority and LMI populations. In its review of the bank's marketing activities and community outreach, the Board did not find any evidence that the bank excludes African Americans or any other minorities.

Region Bank's Fair Lending Program. Regions Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The bank has a fair lending department that includes dedicated managers for each of the bank's lending business groups and provides oversight by conducting fair lending risk assessments and monitoring and testing. In addition, Regions Bank requires mandatory annual fair lending training for applicable staff and has monthly fair lending training for new staff involved in home mortgage lending. Regions Bank also has a centralized consumer complaints program that it monitors to ensure compliance with fair lending regulations.

Conclusion on Convenience and Needs Considerations

Regions Bank represented that the Kingwood branch will benefit depositors by improving customer convenience, creating efficiency, and expanding the availability of products and services to banking customers. Based on all the facts of record, including consultations with other agencies, and for the reasons described in this order, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institution involved in this transaction, is consistent with approval of the application.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.¹⁷ The Board's approval is specifically conditioned on Regions Bank's compliance with all commitments made to the Board in connection with the proposal. The commitments and conditions relied on by the Board are deemed to be conditions imposed in writing in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

Approval of this application is also subject to the establishment of the proposed branch within one year of the date of this order, unless such period is extended by the Board or the Reserve Bank, acting under authority delegated by the Board.

By order of the Board of Governors, effective September 26, 2014.

¹⁷ The Board construes the comment received on the proposal to include a request that the Board hold public hearings on the proposal. Under its rules, the Board 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.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board