



Legal Developments: Fourth Quarter, 2014

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

First American Bank Corporation
Elk Grove Village, Illinois

Order Approving the Acquisition of a Bank
FRB Order No. 2014-18 (November 13, 2014)

First American Bank Corporation (“First American”), Elk Grove Village, Illinois, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire Bank of Coral Gables, Coral Gables, Florida. Immediately following the proposed acquisition, Bank of Coral Gables would be merged into First American’s subsidiary bank, First American Bank, Elk Grove Village.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 *Federal Register* 26758 (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.

First American, with consolidated assets of approximately \$3.4 billion, is the 234th largest insured depository organization in the United States.⁴ First American controls First American Bank, which operates only in Illinois. First American Bank is the 21st largest insured depository institution in Illinois, controlling approximately \$2.4 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

Bank of Coral Gables, with consolidated assets of approximately \$99 million, is the 4,653rd largest insured depository organization in the United States. Bank of Coral Gables operates only in Florida. Bank of Coral Gables is the 204th largest insured depository institution in Florida, controlling approximately \$92 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

¹ 12 U.S.C. § 1842.

² The merger of Bank of Coral Gables into First American Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on September 26, 2014.

³ 12 CFR 262.3(b).

⁴ Asset and nationwide deposit-ranking data are as of June 30, 2014, unless otherwise noted.

⁵ State data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

On consummation of this proposal, First American would become the 225th largest depository organization in the United States, with consolidated assets of approximately \$3.5 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. First American would have total deposits of approximately \$2.4 billion. In Florida, First American would become the 204th largest depository organization.

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.⁶ 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.⁷ The Board also must take into account the record of performance of the acquiring bank under the Community Reinvestment Act (“CRA”)⁸ and applicable state community reinvestment laws.⁹ 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.¹⁰

For purposes of the BHC Act, the home state of First American is Illinois and the home state of Bank of Coral Gables is Florida.¹¹ First American is well capitalized and well managed under applicable law. Florida has a three-year minimum age requirement,¹² and Bank of Coral Gables has been in existence for more than three years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is \$11.0 trillion. On consummation of the proposed transaction, First American would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. The Board also has taken into account First American Bank’s record of performance under the CRA and determined that it does not prohibit the Board from approving the proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

⁶ 12 U.S.C. § 1842(d)(1)(A).

⁷ 12 U.S.C. § 1842(d)(1)(B).

⁸ 12 U.S.C. § 2901 *et seq.*

⁹ 12 U.S.C. § 1842(d)(1)(3).

¹⁰ 12 U.S.C. § 1842(d)(2)(A). 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 any state in which the acquirer and target have overlapping banking operations. 12 U.S.C. § 1842(d)(2)(B). First American and Bank of Coral Gables do not have overlapping banking operations in any state.

¹¹ 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 when 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.

¹² See FLA. STAT. § 658.295(3)(b) (2005). Florida law prohibits a Florida bank from being acquired by an out-of-state bank holding company or bank unless the Florida bank has existed and continuously operated as a bank for more than three years.

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.¹³ First American Bank and Bank of Coral Gables do not compete directly in any banking market.

The Department of Justice has conducted a 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 any 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 basis and a consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board 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 has considered the financial factors of the proposal. First American and First American Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company acquisition of a bank and a subsequent bank merger, structured as a cash transaction. The asset quality, earnings, and liquidity of First American Bank and Bank of Coral Gables are consistent with approval, and First American appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations.¹⁴ Based on

¹³ 12 U.S.C. § 1842(c)(1).

¹⁴ The anticipated aggregate cash consideration to be paid in connection with the merger is approximately \$7.5 million, and First American has sufficient cash to fund the proposed transaction. A commenter criticized First American for the proposed purchase price, claiming that it does not reflect the amount shareholders of Bank of Coral Gables previously invested in the bank. This allegation is outside the scope of what the Board is required to consider as part of the applications process. See *Western Bancshares, Inc. v. Board of Governors of the Federal Reserve System*, 480 F.2d 749 (10th Cir. 1973).

its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.¹⁵

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 First American, First American Bank, and Bank of Coral Gables, 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.

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

The Board also has considered First American's plans for implementing the proposal. First American is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. First American would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, First American's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and First American is proposing to integrate Bank of Coral Gables' existing management and personnel in a manner that augments First American Bank's management.¹⁶

First American'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 record of effectiveness of First American and Bank of Coral Gables in combatting money laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").¹⁷ 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,¹⁸ and requires the appropriate federal financial supervisory agency to take into account a relevant

¹⁵ As part of this proposal, some shareholders of Bank of Coral Gables are required to purchase shares of First American. The commenter further criticized First American for failing to disclose the purchase price per share to be paid by these shareholders. This allegation also is outside the scope of what the Board is required to consider as part of the applications process.

¹⁶ On consummation, two individuals currently serving as directors of Bank of Coral Gables will be added to the board of directors of First American Bank.

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

¹⁸ 12 U.S.C. § 2901(b).

depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.¹⁹

The Board has considered all the facts of record, including reports of examination of the CRA performance of First American Bank and Bank of Coral Gables, data reported by First American Bank under the Home Mortgage Disclosure Act ("HMDA"),²⁰ other information provided by First American, 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 First American Bank's fair-lending record in the Chicago Metropolitan Statistical Area ("Chicago MSA") as reflected in 2012 HMDA data.

A. Records of Performance under the CRA

As provided in the CRA, the Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisor of the CRA performance records of that institution.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, on site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of First American Bank. First American Bank was assigned an overall rating of "satisfactory" at its most recent CRA performance evaluation by the FDIC in February 2013 ("FAB Evaluation"). First American Bank received a "high satisfactory" rating for both the Lending Test and the Service Test and a "low satisfactory" rating for the Investment Test.²³

With respect to the Lending Test, examiners noted that First American Bank's lending activity was adequate in response to assessment area credit needs. Examiners determined that the bank originated an adequate percentage of its loans inside its assessment area. Although First American Bank's distribution of lending to borrowers of different incomes and businesses of different sizes was considered adequate, examiners highlighted that, with respect to the bank's overall home mortgage lending, lending to low-income as well as moderate-income borrowers was considered good. Examiners found that First American Bank's geographic distribution of loans was adequate, including its distribution of home mortgage loans.²⁴

The bank's small business lending performance was considered adequate, including its distribution of small loans (less than or equal to \$1 million) to businesses, consistent with the demographic characteristics of the area. Examiners found that First American Bank made a relatively high level of community development loans. Examiners also noted that First

¹⁹ 12 U.S.C. § 2903.

²⁰ 12 U.S.C. § 2801 *et seq.*

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

²² 12 U.S.C. § 2906.

²³ The evaluation was prepared using the interagency evaluation procedures for large institutions covering the period from June 2, 2010, through February 19, 2013. The assessment area encompassed Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Kankakee, Lake, McHenry, and Will counties in Illinois.

²⁴ The FAB Evaluation found that opportunities for financial institutions to lend in low-and moderate-income tracts were limited because only 4 percent of housing units located in low-income tracts, and 18 percent of housing units located in moderate-income tracts, were owner-occupied.

American Bank made use of innovative and/or flexible lending practices to serve assessment area credit needs, in particular the credit needs of small businesses and first-time home buyers. First American Bank is qualified as a preferred U.S. Small Business Administration (“SBA”) lender and, during the evaluation period, funded a number of SBA loans. First American Bank also participated in guaranteed loan programs sponsored by the Federal Housing Administration and the U.S. Department of Veterans Affairs.

With respect to the Investment Test, examiners concluded that First American Bank had an adequate level of qualified community development investments and grants, occasionally using complex investment instruments. With respect to the Service Test, examiners found that First American Bank’s delivery systems were reasonably accessible to all portions of the institution’s assessment area and highlighted the bank’s convenient branch hours of operation, automated teller machine network, mobile banking, and flexibility of products and services. Furthermore, examiners found that First American Bank was a leader in providing community development services; and that bank employees, management, and board members participated in a number of different qualifying community development services, a significant portion of which targeted assistance to low- and moderate-income individuals and families.

CRA Performance of Bank of Coral Gables. Bank of Coral Gables was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of June 2011 (“Bank of Coral Gables Evaluation”).²⁵ Examiners noted that the bank’s CRA performance demonstrated a reasonable responsiveness to the credit needs of its assessment area. Examiners found that a majority of the small business and residential real estate loans originated by Bank of Coral Gables were made within the bank’s assessment area. Examiners also noted that Bank of Coral Gables’ overall distribution of loans reflected a reasonable dispersion within its assessment area and that Bank of Coral Gables’ penetration of loans among individuals of different income levels, including LMI individuals, and among businesses of different sizes was reasonable given the demographics of the assessment area.

B. Fair Lending and Other Consumer Protection Laws

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

Analysis of HMDA Data. The Board analyzed First American Bank’s 2012 HMDA data, the most recent publicly available in the specific market area addressed in the public comment (Chicago MSA), as well as its 2013 HMDA data. The Board reviewed 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 related specifically to the loan products that were the subject of the public comment on the proposal, including conventional home purchase loans, home improvement loans, and refinance loans. The Board analyzed the bank’s combined assessment area in addition to the specific market area addressed in the public com-

²⁵ The Bank of Coral Gables Evaluation was prepared using evaluation procedures for small institutions covering the period from June 5, 2008, through June 3, 2011. These procedures evaluate the CRA performance of a bank’s lending relative to five performance categories: average net loan-to-deposit ratio, assessment area lending, geographic distribution, borrower distribution, and response to CRA-related complaints.

ment (Chicago MSA). Within those data sets, the Board focused its review on data related to conventional 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).

The commenter expressed concerns, based on 2012 HMDA data, that First American Bank was not meeting the credit needs of minority individuals in the Chicago MSA. In particular, the commenter alleged that First American Bank did not originate any conventional home purchase loans to African Americans, and originated more refinance loans and home improvement loans to whites than to African Americans or Hispanics. The commenter also asserted that First American Bank disproportionately denied applications by African American and Hispanic applicants for home purchase loans and home improvement loans in the Chicago MSA, suggesting a pattern of denial rate disparities.²⁶

The Board's review confirmed the levels of lending by First American Bank to African American and Hispanic borrowers and denial disparity ratios noted by the commenter. However, the Board's analysis of HMDA data for conventional home purchase loans, refinance loans, and home improvement loans by First American Bank in the Chicago MSA did not show any significant differences between First American Bank's lending and the aggregate lending for such loan products in that MSA for 2012 and 2013.²⁷ In 2012, 4.3 percent of First American Bank's HMDA loans in the Chicago MSA were originated to African Americans, and 9.7 percent of First American Bank's HMDA loans were originated to Hispanics. In comparison, for all HMDA reporters in the Chicago MSA in 2012, the percentage of loans originated to African Americans was 4.6 percent and the percentage of loans originated to Hispanics was 6.7 percent. Similarly, in 2013, 3.2 percent of First American Bank's HMDA loans in the Chicago MSA were originated to African Americans and 8 percent of First American Bank's HMDA loans were originated to Hispanics. In comparison, for all HMDA reporters in the Chicago MSA in 2013, the percentage of loans originated to African Americans was 5.7 percent and the percentage of loans originated to Hispanics was 8 percent.

Further, HMDA data for the Chicago MSA demonstrate that in 2012 and 2013, First American Bank had a lower disparity in its denial percentages for HMDA loans to African American and Hispanic applicants as compared to white non-Hispanic applicants than the aggregate disparity in denial percentages for HMDA loans among such applicants by all HMDA lenders in the Chicago MSA. In 2012, the disparities between the percentages of HMDA loans denied to African American and Hispanic applicants as compared to the percentages of HMDA loans denied to white non-Hispanic applicants were 1.7 percent and 1.4 percentage points, respectively, for First American Bank and 2.1 and 1.8 percentage points, respectively for all HMDA lenders in the Chicago MSA. Similarly, in 2013, the disparities between the percentages of HMDA loans denied to African American and Hispanic applicants compared to the percentages of HMDA loans denied to white applicants were 1.9 and 1.6 percentage points, respectively, for First American Bank, and 2.1 and 1.8 percentage points, respectively, for all HMDA lenders in the Chicago MSA.

²⁶ In addition to these fair lending allegations, the commenter provided information related to an individual consumer's complaint about First American Bank's rewards checking product. Individual consumer complaints generally are considered to be outside the scope of what the Board is required to consider as part of the applications process, unless they allege a pattern or practice in violation of federal banking laws, which is not the present case. The FDIC's recent FAB Evaluation did not find such a pattern or practice by First American Bank.

²⁷ 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.

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.²⁸ 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 Board has consulted with, and places special emphasis on the views of, First American Bank's primary federal supervisor, the FDIC, regarding its evaluation of the bank's compliance with fair lending laws and regulations. Based on its recent FAB Evaluation, the FDIC reported that it did not find evidence that First American Bank engaged in discriminatory or other illegal credit practices and expressed no concern regarding the adequacy of First American Bank's fair lending policies and procedures.

With respect to the specific HMDA data on home purchase, home improvement, and refinancing loans cited by the commenter, First American provided information reflecting non-discriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). First American also provided the Board with detailed information on First American 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. These same materials were available to the FDIC during its recent review of First American Bank.

First American Bank's Fair Lending Program. First American Bank has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The bank's legal and compliance risk management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations. The program provides for a second-level review of all declined and withdrawn retail and mortgage loans by a committee composed of the bank's chairman, president, and managers in the retail and mortgage loan departments. The program also requires annual fair lending training for all employees involved in any aspect of the bank's credit transactions.

In addition, fair lending audits are conducted periodically throughout the year by First American Bank's Internal Audit Department, which reports directly to First American Bank's Audit Committee. These internal audits evaluate the bank's compliance with fair lending laws and monitors for fair lending risk in decision-making and pricing using the Interagency Fair Lending Review Guidelines. The Internal Audit Department performs annual in-depth fair lending reviews of the bank's HMDA data. First American Bank's risk management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

²⁸ 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.

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. First American has represented that one of the motivating factors behind the proposed acquisition is to allow First American to better serve its customers in the Coral Gables, Florida area.²⁹ In addition, Bank of Coral Gables is operating under a Consent Order with the FDIC and the Florida Office of Financial Regulation,³⁰ and its lending has been constrained by the terms of the Consent Order. Through consummation of the proposal, First American would be able to provide additional financial and managerial resources needed to enable the merged bank to increase its lending in the greater Coral Gables market and reach customers throughout the entire Miami/Dade area.

First American represents that upon consummation of the proposal, it will provide customers of Bank of Coral Gables with the full range of products and services currently being offered to customers of First American Bank, including trust services, health savings accounts, a broader broker origination model, and a service mortgage program aimed at meeting the need for fixed-rate mortgages in low- and moderate-income areas. First American also plans to expand the marketing of Bank of Coral Gables' home equity lending program and to use First American Bank's SBA Preferred Lender status to expand Bank of Coral Gables' existing trade finance business.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by First American, 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 First American Bank and Bank of Coral Gables, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

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

²⁹ First American Bank originated 10 small business loans in the state of Florida in 2013.

³⁰ Consent Order, FDIC-09-6906, OFR 0697-FI-12/09 (2010).

³¹ 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).

financial system, and the extent of the cross-border activities of the resulting firm.³² 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.³³

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, First American would have approximately \$3.5 billion in consolidated assets and would be the 225th 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, First American's intrafinancial assets and liabilities would constitute a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.³⁴ 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

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 Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

³⁴ 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.

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

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

By order of the Board of Governors, effective November 13, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

ViewPoint Financial Group, Inc.
Plano, Texas,

LegacyTexas Bank
Plano, Texas,

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2014–20 (December 9, 2014)

ViewPoint Financial Group, Inc. (“ViewPoint”), has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to merge with LegacyTexas Group, Inc. (“LegacyTexas”), and thereby acquire its subsidiary state member bank, LegacyTexas Bank, all of Plano, Texas. In addition, LegacyTexas Bank has requested the Board’s approval under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)² to merge with ViewPoint’s subsidiary bank, ViewPoint Bank, N.A. (“ViewPoint Bank”), Plano, Texas, with LegacyTexas Bank as the surviving entity.³ LegacyTexas Bank also has applied under section 9 of the Federal Reserve Act (“FRA”) to establish and operate branches at the locations of the main office and the branches of ViewPoint Bank.⁴

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Federal Register* 44773 (August 1, 2014)) and in local newspapers in accordance with relevant statutes and the Board’s Rules of Procedure.⁵ As required by the Bank Merger Act, a report on the competitive effects of the bank merger was requested from the United States Attorney General, and a copy of the request was provided to the appropriate banking agency. The time for submitting comments has

¹ 12 U.S.C. § 1842.

² 12 U.S.C. § 1828(c).

³ Although LegacyTexas Bank filed under the Bank Merger Act and FRA because its name and charter will survive the merger, ViewPoint Bank is the acquirer for substantive purposes of this proposal and would implement its management, policies, procedures, and controls at the combined organization.

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

⁵ 12 CFR 262.3(b).

expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA.

ViewPoint, with consolidated assets of approximately \$4.0 billion, is the 210th largest insured depository organization in the United States.⁶ ViewPoint controls ViewPoint Bank, which operates only in Texas. ViewPoint Bank is the 24th largest depository institution in Texas, controlling deposits of approximately \$2.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in the state.⁷

LegacyTexas, with total consolidated assets of \$1.8 billion, is the 391st largest insured depository organization in the United States. LegacyTexas controls LegacyTexas Bank, which operates only in Texas. LegacyTexas Bank is the 37th largest insured depository institution in Texas, controlling deposits of approximately \$1.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, ViewPoint would become the 162nd largest insured depository organization in the United States, with total consolidated assets of approximately \$5.8 billion. ViewPoint would have total consolidated deposits of approximately \$4.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Texas, ViewPoint would become the 16th largest depository organization, controlling deposits of approximately \$4.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

Competitive Considerations

Section 3 of the BHC Act and the Bank Merger Act prohibit the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. Both statutes also prohibit the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.⁸

ViewPoint and LegacyTexas have subsidiary depository institutions that compete directly in the Dallas and Fort Worth banking markets, both in Texas.⁹ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets; the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by ViewPoint and LegacyTexas;¹⁰ the concentration levels of market deposits and the increase in those levels, as

⁶ Asset and nationwide deposit-ranking data are as of June 30, 2014, unless otherwise noted.

⁷ State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

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

⁹ The Dallas banking market is defined as Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie, and Ferris in Ellis County, all in Texas (the “Dallas banking market”). The Fort Worth banking market is defined as Tarrant, Johnson, and Wise counties; Parker County (minus Mineral Wells); and the southwestern quadrant of Denton County, including Roanoke, all in Texas (the “Fort Worth banking market”).

¹⁰ Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Finan-*

measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹¹ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the markets. On consummation of the proposal, the Dallas banking market would remain highly concentrated and the Fort Worth banking market would remain unconcentrated, as measured by the HHI. The HHI change in each market would be minimal, and numerous competitors would remain in both markets.¹²

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

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

Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations’ significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of

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

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

¹² ViewPoint operates the ninth largest depository institution in the Dallas banking market, with approximately \$2.1 billion in deposits, which represent 1.4 percent of market deposits. LegacyTexas operates the 15th largest depository institution in the same market, controlling deposits of approximately \$1.2 billion, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, ViewPoint would operate the seventh largest depository institution in the market, controlling weighted deposits of approximately \$3.3 billion, which represent 2.2 percent of market deposits. The HHI would increase by three points to 1811, and 126 competitors would remain in the market.

ViewPoint operates the 51st largest depository institution in the Fort Worth banking market with approximately \$57 million in deposits, which represent less than 1 percent of market deposits. LegacyTexas operates the 20th largest depository institution in the same market, controlling deposits of approximately \$242 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, ViewPoint would operate the 17th largest depository institution in the market, controlling weighted deposits of approximately \$300 million, which represent less than 1 percent of market deposits. The HHI would increase by less than 1 point to 994, and 74 competitors would remain in the market.

the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions.

In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of the financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. ViewPoint Bank and LegacyTexas Bank are both well capitalized and the combined institution would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange and a subsequent bank merger of the subsidiary depository institutions.¹³ The asset quality, earnings, and liquidity of both ViewPoint Bank and LegacyTexas Bank are consistent with approval, and ViewPoint appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of ViewPoint, LegacyTexas, 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 the organizations' records of compliance with applicable banking and anti-money-laundering laws.

ViewPoint, LegacyTexas, and their subsidiary depository institutions are each considered to be well managed. ViewPoint's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of ViewPoint have substantial knowledge and experience in the banking and financial services sectors.¹⁴

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

ViewPoint'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

¹³ As part of the proposed transaction, each share of LegacyTexas common stock would be converted into a right to receive cash and ViewPoint common stock, based on an exchange ratio.

¹⁴ Both the chairman and chief executive officer of ViewPoint would continue in their roles following consummation of the proposed transaction. In addition, two current members of the board of directors of LegacyTexas would become directors of ViewPoint, with one being elected as Vice Chairman of the board.

the proposal, as well as the records of effectiveness of ViewPoint and LegacyTexas in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and under the Bank Merger Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).¹⁵ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation.¹⁶ In addition, the CRA requires the appropriate federal financial supervisory agency to take into account a relevant depository institution’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.¹⁷

The Board has considered all the facts of record, including reports of examination of the CRA performance of ViewPoint Bank and LegacyTexas Bank, other information provided by ViewPoint and LegacyTexas, confidential supervisory information, and the public comment received on the proposal. The commenter objected to the proposal and alleged that LegacyTexas Bank had engaged in discriminatory lending practices in the Dallas, Texas area.

A. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of that institution.¹⁸ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.¹⁹ An institution’s most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution’s overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of ViewPoint Bank. ViewPoint Bank was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”) as of January 14, 2013 (“ViewPoint Bank Evaluation”).²⁰ ViewPoint Bank received an “outstanding” rating on the Investment Test and a “high satisfactory” rating on both the Lending Test and the Service Test.²¹

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

¹⁶ 12 U.S.C. § 2901(b).

¹⁷ 12 U.S.C. § 2903.

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

¹⁹ 12 U.S.C. § 2906.

²⁰ The ViewPoint Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from April 1, 2008, through September 30, 2012, except for community development loans. The evaluation period for community development loans and for the Investment Test and the Service Test was from May 12, 2008, through January 14, 2013.

²¹ The ViewPoint Bank Evaluation included a full-scope review of the Dallas, Texas, Assessment Area (“Dallas AA”) and a limited scope review of the Fort Worth, Texas, Assessment Area and the Jack County, Texas, Assessment Area. Examiners placed greater weight on the bank’s performance in the Dallas AA because this area represented the bank’s most significant market in terms of deposit concentrations, branch distributions, and CRA-reportable loans.

In evaluating the Lending Test, examiners observed in the Dallas AA that the bank's overall lending and home mortgage lending activity was adequate, and its small business lending was good.²² Examiners noted that ViewPoint Bank's distribution of loans to borrowers of different income levels and businesses of different sizes was good. In particular, the bank's borrower distribution of home purchase loans was found to be excellent, while the distribution of home mortgage improvement loans and home mortgage refinance loans was adequate. Overall, the geographic distribution of loans was found to be adequate.

Examiners found that ViewPoint Bank's community development lending in the Dallas AA was significant and that the bank originated an excellent level of community development loans during the evaluation period. Examiners noted that the bank is a participant in a number of governmental and privately sponsored programs that are designed to assist LMI individuals and to small businesses.

In evaluating the Investment Test, examiners found that ViewPoint Bank's level of community development investments and grants in the Dallas AA was excellent and that the bank exhibited good responsiveness to the community development needs in the Dallas AA. Examiners noted that these investments helped fund several projects, including a multi-family housing complex and a senior-living retirement community.

For the Service Test, examiners found that ViewPoint Bank's performance in the Dallas AA was good. Examiners noted that ViewPoint Bank's retail services and delivery systems were reasonably accessible to essentially all portions of the Dallas AA and that the bank's record of opening and closing branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies or to LMI individuals. Examiners found ViewPoint Bank to be a leader in providing community development services that were highly responsive to community needs.

Examiners reported that they did not find any evidence during the course of the ViewPoint Bank Evaluation that ViewPoint Bank engaged in discriminatory or other illegal credit practices.

CRA Performance of LegacyTexas Bank. LegacyTexas Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas ("Reserve Bank") as of January 6, 2014 ("LegacyTexas Bank Evaluation"). Examiners noted that LegacyTexas Bank's lending levels reflected reasonable responsiveness to assessment area credit needs and that the bank was a leader in making community development loans and providing community development services.²³ LegacyTexas Bank received a "high satisfactory" rating for the Lending Test, the Investment Test, and the Service Test.²⁴

For the Lending Test, examiners noted that LegacyTexas Bank's level of home mortgage, small business, and consumer lending activity reflected good responsiveness to assessment

²² Examiners placed more emphasis on the bank's home mortgage loans than the distribution of small business loans because of the larger number of home mortgage loans over the review period. Within the home mortgage loan category, greater weight was placed on home purchase and home refinance loans.

²³ The LegacyTexas Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2011, through December 31, 2012. The evaluation period for community development loans and the Investment Test and Service Test was from January 1, 2010 to December 31, 2013.

²⁴ The LegacyTexas Bank Evaluation included a full-scope review of the bank's performance within its assessment area located in Collin, Dallas, and Denton Counties in Texas ("Collin-Denton-Dallas AA") and within its assessment area located in Parker and Tarrant Counties in Texas. Examiners placed greater weight on the bank's performance in the Collin-Denton-Dallas AA because this area represented the bank's most significant market in terms of deposit concentrations, branch distributions, and CRA-reportable loans.

area credit needs considering the bank's resources, business strategy, community needs, and opportunities during the evaluation period.²⁵ Examiners found that the bank's geographic distribution of loans reflected good penetration throughout the assessment area, and the borrower distribution reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Examiners further noted that LegacyTexas Bank participated in a relatively high level of community development loans.

In evaluating the Investment Test, examiners observed that the bank made a significant level of qualified community development investments and donations. Examiners found that LegacyTexas Bank exhibited excellent responsiveness to credit and community development needs by supporting organizations that provide financing to small businesses and affordable housing for LMI individuals.

In evaluating the Service Test, examiners found that the bank's delivery systems were accessible to the bank's geographies and individuals of different income levels. LegacyTexas Bank's record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly to LMI geographies and individuals. Examiners observed that LegacyTexas Bank was a leader in providing community development services, especially within the Collin-Dallas-Denton AA. Examiners did not find any evidence during the course of the LegacyTexas Evaluation that LegacyTexas Bank engaged in discriminatory or other illegal credit practices.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of ViewPoint Bank and LegacyTexas Bank in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed the ViewPoint Bank Evaluation, the LegacyTexas Bank Evaluation, and a comprehensive fair lending and redlining review of LegacyTexas Bank completed by examiners with the Reserve Bank. The Board also assessed ViewPoint Bank's and LegacyTexas Bank's fair lending policies and procedures, and considered confidential supervisory information, other information, the comment on the applications, and ViewPoint Bank's response to the comment.

Fair Lending Analysis. A commenter alleged that LegacyTexas Bank disfavors African American neighborhoods in the Dallas assessment area with respect to access to its banking products and services and that the bank has engaged in redlining. The Reserve Bank recently conducted a comprehensive fair lending and redlining review of LegacyTexas in Dallas and Tarrant counties, Texas, and the Board has relied on the examination findings in this case. Examiners analyzed LegacyTexas Bank's CRA assessment area, lending record, geographic distribution of branches, and marketing and outreach efforts, and did not find illegal credit discrimination.

The Reserve Bank found that the LegacyTexas Bank's assessment area designations met the requirements of the CRA. Examiners also found that LegacyTexas Bank had service area boundaries around each branch that were narrower than the CRA assessment area. This led examiners to review these boundaries to determine if LegacyTexas Bank was relying on them to avoid lending and marketing in minority areas within the bank's CRA assessment area. On review, examiners found no evidence that LegacyTexas Bank was relying on these service area designations in a discriminatory fashion. In addition, LegacyTexas Bank has taken steps to eliminate its use of these service area boundaries.

²⁵ Examiners placed equal weight on home mortgage and small business loans due to comparable lending volume.

The Reserve Bank also reviewed the geographic distribution of LegacyTexas Bank's branches, the bank's marketing activities, and other community outreach efforts. LegacyTexas Bank operates five full-service branches in Tarrant County, with one located in a majority-minority tract and four located in integrated tracts. LegacyTexas Bank operates four full service branches in Dallas County with three located in integrated tracts and one located in a non-minority tract. Examiners found no differences between the lending policy at LegacyTexas Bank branch offices located in areas with concentrations of minority residents and other areas.²⁶ The Reserve Bank also found that LegacyTexas Bank's marketing activities and community outreach efforts included partnering with local nonprofit organizations to provide outreach to LMI communities and providing financial education to individuals and small businesses.

Examiners also reviewed LegacyTexas Bank's lending policies and procedures, including the fair lending policy. LegacyTexas Bank has instituted policies and procedures that cover all relevant fair lending laws to help ensure compliance with fair lending and other consumer protection laws and regulations. This includes a formal fair lending compliance program and an annual training program for employees. LegacyTexas Bank also performs both internal and external reviews for accuracy of HMDA, CRA reporting and fair lending risk, including annual testing of fair lending compliance by independent consultants.

ViewPoint's Fair Lending Program. ViewPoint Bank's risk-management systems and its policies and procedures for ensuring compliance with fair lending laws would be implemented at the combined organization immediately upon consummation of the proposed transactions.

ViewPoint indicated that ViewPoint Bank has detailed, comprehensive CRA, fair lending, and consumer compliance programs as part of its overall risk-management program, which applies across all aspects of the bank's operations, including marketing, loan origination, processing, underwriting, servicing, and collection activities. All extensions of credit, including loans to minority and LMI individuals, are subject to a separate second-review process by senior lending staff in the case of a potential denial. In addition, a fair lending officer monitors all HMDA loans and conducts a quarterly review to ensure full compliance with all policies, procedures, and fair lending law requirements. ViewPoint Bank also has a CRA Advisory Committee, which exercises direct oversight over the CRA compliance program and reviews quarterly assessments of performance.

Additionally, ViewPoint Bank's lending compliance function is subject to both internal audit policies established by the board of directors and an independent external audit by a third party, which conducts quarterly reviews of fair lending analyses of HMDA data, consumer compliance, and related internal audit activities. ViewPoint Bank also conducts a comprehensive risk assessment and provides compliance training for applicable employees annually.

The OCC, which is the primary supervisor for ViewPoint Bank, has indicated that it did not find evidence of discriminatory or other illegal credit practices in its review of ViewPoint Bank's fair lending policies and procedures.

²⁶ ViewPoint has represented that CRA products were not available at every LegacyTexas Branch location. Upon consummation of the proposed merger, ViewPoint has represented that CRA products will be available at every branch of the combined institution.

C. Additional Information on Convenience and Needs to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits. The commenter alleged that the proposal would not provide a clear or significant public benefit.

ViewPoint indicated that it does not intend to discontinue or significantly change any services or products offered by either institution as a result of the proposed transaction, other than consolidate like product types. ViewPoint also indicated that the convenience and needs of the community would be enhanced by the increased size and strength of the combined institution, which would increase the bank's lending limit. ViewPoint notes that the combined organization would be able to provide customers with benefits through more efficient and cost-effective provision of banking services and would be able to dedicate additional resources to meeting the banking needs of its customers.

ViewPoint represents that the proposal would offer customers convenience through a broader range of financial products. For example, ViewPoint indicates that as a result of the merger, customers of LegacyTexas Bank would have access to home equity lines of credit and each of its branches would be able to take and submit home improvement loan applications. Additionally, ViewPoint has represented that customers of ViewPoint Bank would be able to access home purchase mortgages and refinancing products and that all CRA loan products would be available at all branch locations of the combined organization.

ViewPoint represents that the merger would benefit current customers of LegacyTexas Bank through access to a larger branch network. The branch network available to ViewPoint and LegacyTexas customers would increase to 51 branches, including several LMI branches. ViewPoint also has indicated that customers of LegacyTexas Bank would also gain access to ViewPoint's network of bank-owned ATMs and to extended call center hours.

D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by ViewPoint and LegacyTexas, confidential supervisory information, and the public comment on the proposal. Based on the above, the Board believes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the applications.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."²⁷ The Dodd-

²⁷ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

Frank Act also amended the Bank Merger Act to require the Board to consider “the risk to the stability of the United States banking or financial system.”²⁸

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.²⁹ 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.³⁰

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, ViewPoint would have approximately \$5.8 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be among the 100 largest U.S. financial institutions. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results in a firm with less than \$25 billion in consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other 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, ViewPoint’s intrafinancial assets and liabilities would constitute a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in such services would have a great impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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

Other Considerations

LegacyTexas Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the main office and branches of ViewPoint Bank. The Board

²⁸ Section 604(f) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1602, codified at 12 U.S.C. § 1828(c)(5).

²⁹ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

³⁰ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (February 14, 2012).

has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.³¹

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the applications should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by ViewPoint 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 applications. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law. The proposal may not be consummated before the fifteenth calendar day after the effective date of this Order, or later than three months thereafter, unless such period is extended for good cause by the Board or Reserve Bank, acting under delegated authority.

By order of the Board of Governors, effective December 9, 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 in Texas to Be Established by LegacyTexas Bank

Addison

1. 4560 Beltline Road

West Allen

2. 225 Custer Road

Allen

3. 321 East McDermott

Carrollton

4. 1801 Keller Springs

North Carrollton

5. 4037 Old Denton Road

Coppell

6. 687 North Denton Tap Road

Preston Royal

7. 10720 Preston Road

³¹ 12 U.S.C. § 322; 12 CFR 208.6(b).

Oak Cliff

8. 2498 West Illinois

Preston-Forrest

9. 5941 Forest Lane

Preston Motor

10. 6801 Preston Road

Preston Center

11. 8411 Preston Road

Lake Highlands

12. 9625 Audelia Road

N.E. Tarrant County

13. 3040 State Highway 121

West Frisco

14. 2975 Main Street

Frisco

15. 3833 Preston Road

Garland

16. 2218 North Jupiter Road

Grand Prairie

17. 215 North Carrier Parkway

Jacksboro

18. 201 South Main Street

McKinney

19. 2500 West Virginia Parkway

Resulting Institutions' Main Office

20. 1309 West 15th Street, Suite 400

East Plano

21. 2501 East Plano Parkway

West Plano

22. 5400 Independence Parkway

Tollroad

23. 5900 West Park Boulevard

West Richardson

24. 1280 West Campbell Road

Richardson Motor

25. 1775 North Plano Road

Runaway Bay

26. 1055 Highway 380 West

Wylie

27. 3490 FM 544

Flower Mound

28. 1201 Flower Mound

Grapevine

29. 301 South Park Boulevard

Plano Central

30. 1201 West 15th Street

Richardson

31. 720 East Arapaho

McKinney Motor

32. 231 North Chestnut

Orders Issued Under Section 4 of the Bank Holding Company Act

Midland States Bancorp, Inc .
Effingham, Illinois

Order Approving the Acquisition of a Savings and Loan Holding Company, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2014-22 (December 11, 2014)

Midland States Bancorp, Inc. (“Midland”), Effingham, Illinois, 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 by merger Love Savings Holding Company (“LSHC”) and its wholly owned subsidiary, Heartland Bank, FSB (“Heartland Bank”), both of St. Louis, Missouri.²

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

Notice of the proposals, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (78 *Fed. Reg.* 61845 (October 4, 2013)) in accordance with the Bank Merger Act and the Board’s Rules of Procedure.⁵ As required by the

¹ 12 U.S.C. §§ 1843(c)(8) and (j).

² LSHC is currently controlled by members of the Love family. The Love family controls Heartland Bank through direct ownership and controlled entities. Five of these vehicles are registered savings and loan holding companies: The Love Family 1941 Trust, The Love Family Charitable Trust, The Love Family Testamentary Trust, The Love Group Joint Venture, and The Love Real Estate Company.

³ 12 U.S.C. § 1828(c).

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

⁵ 12 CFR 262.3(b).

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 proposals and all comments received in light of the factors set forth in section 4 of the BHC Act, the Bank Merger Act, and the FRA.

Midland, with total consolidated assets of approximately \$1.7 billion, is the 408th largest depository organization in the United States, controlling deposits of approximately \$1.4 billion, which represent less than 0.1 percent of the total amount of deposits of insured depository institutions in the United States (“national deposits”).⁶ Midland Bank operates branches in Illinois and Missouri. Midland Bank is the 32nd largest insured depository institution in Illinois, with deposits representing less than one percent of total deposits of insured depository institutions in that state. Midland Bank is the 296th largest insured depository institution in Missouri, with deposits representing less than 0.1 percent of total deposits of insured depository institutions in that state (“state deposits”).⁷

LSHC, with total consolidated assets of approximately \$845.0 million, controls deposits of approximately \$662.5 million. Heartland Bank operates branches in Missouri and Colorado and is the 33rd largest insured depository institution in Missouri, with deposits representing 0.4 percent of the total amount of state deposits.

On consummation of the proposed transactions, Midland would become the 281st largest depository organization in the United States and would become the 32nd largest depository organization in Missouri. Midland would control deposits of approximately \$2.1 billion nationwide and approximately \$678.1 million in Missouri, representing less than 0.1 percent of national deposits and 0.5 percent of state deposits.

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 Midland has represented that all activities of LSHC will, upon consummation, be permissible for a bank holding company to conduct.

Interstate and Deposit Cap Analyses

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended section 4 of the BHC Act¹⁰ and the Bank Merger Act¹¹ to provide that, in general, the Board may not approve an application by a bank holding company to acquire an insured depository institution, or an application by one insured depository institution to acquire another insured depository institution, if the home state of the target insured depository institution is a state other than the home state of the applicant 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 (collectively, “nationwide deposit

⁶ Asset and nationwide deposit ranking data are as of December 31, 2013. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

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

⁸ 12 CFR 225.28(b)(4)(ii).

⁹ 12 CFR 225.28(b)(4)(ii).

¹⁰ Dodd-Frank Act § 623(b), codified at 12 U.S.C. § 1843(i)(8).

¹¹ Dodd-Frank Act § 623(a), codified at 12 U.S.C. § 1828(c)(13).

caps”).¹² The intended purpose of the nationwide deposit caps was to help guard against undue concentrations of economic power.¹³ For purposes of the BHC Act and the Bank Merger Act, the home state of Midland is Illinois and the home state of Heartland Bank is Missouri.¹⁴

Based on the latest available data reported by all insured depository institutions in the United States, the total amount of deposits of insured depository institutions is \$11.0 trillion.¹⁵ On consummation of the proposed transaction, Midland would control less than 0.1 percent of the total amount of deposits in insured depository institutions in the United States. Accordingly, in light of all the facts of record, the Board is not required to deny the proposals under section 4(i) of the BHC Act or under the Bank Merger Act.

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.¹⁶ 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.¹⁷ In addition, 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.¹⁸

Midland Bank and Heartland Bank compete directly in the St. Louis, Missouri, banking market.¹⁹ The Board has reviewed the competitive effects of the proposals in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative shares of the total deposits in insured depository institutions in the market (“market deposits”) that

¹² For a detailed discussion of the nationwide deposit cap, see *Bank of America Corporation/LaSalle*, 93 *Federal Reserve Bulletin* C109, C109-C110 (2007); *Bank of America Corporation/Fleet*, 90 *Federal Reserve Bulletin* 217, 219-220 (2004) (“Fleet Order”).

¹³ Fleet Order at 219.

¹⁴ 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. 12 U.S.C. § 1841(o)(4)(C). For a state bank, the home state is the state by which the bank is chartered. 12 U.S.C. § 1828(c)(13)(C)(ii)(II). For a federal savings association, the home state is the state in which the home office of the savings association is located. 12 U.S.C. § 1828(c)(13)(C)(ii)(III); 12 U.S.C. § 1841(o)(4)(E).

¹⁵ See Fleet Order at 219. Deposit data are calculated based on reports filed by insured depository institutions and are as of December 31, 2013. Each bank and savings association insured by the Federal Deposit Insurance Corporation (“FDIC”) in the United States must report data regarding its total deposits in accordance with the definition of “deposit” under the Federal Deposit Insurance Act, 12 U.S.C. § 1813(l), on the institution’s Consolidated Report of Condition and Income. Deposit data for FDIC-insured U.S. branches of foreign banks and federal branches of foreign banks are obtained from the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. These data are reported quarterly to the FDIC and are publicly available.

¹⁶ 12 U.S.C. § 1828(c)(5).

¹⁷ 12 U.S.C. § 1828(c)(5)(B).

¹⁸ 12 U.S.C. § 1843(j)(2)(A).

¹⁹ The St. Louis, Missouri, banking market consists of the city of Saint Louis; Franklin, Jefferson, Lincoln, Saint Charles, Saint Louis, Warren and Washington counties; Roark, Boeuf, Canaan and Brush Creek townships, including the cities of Hermann and Owensville, in Gasconade County; Boone township in Crawford County; Loutre township in Montgomery County, all in Missouri; also Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe and St. Clair counties; the western part of Randolph County, defined by Route 3 on the east and the Kaskaskia River on the south, including the cities of Red Bud, Ruma and Evansville; Washington County (minus Ashley and Du Bois townships); and the entire city of Centralia, all in Illinois.

Midland Bank would control,²⁰ 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”),²¹ and other characteristics of the market.

Consummation of the proposed transactions would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the banking market. On consummation of the proposal, the St. Louis, Missouri, banking market would remain unconcentrated, as measured by the HHI. The changes in the HHI’s measure of concentration would be minimal, and numerous competitors would remain in the banking market.²²

The DOJ has conducted a review of the potential competitive effects of the proposed transactions and has advised the Board that consummation of the transactions 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 proposals.

Based on all the facts of record, the Board concludes that consummation of the proposed transactions would not have a significantly adverse effect on competition or on the concentration of resources in the St. Louis, Missouri banking market or any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

In addition to assessing competitive effects of the merger, 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 institutions, the convenience and needs of the communities 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.²³ The Board

²⁰ 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).

²¹ 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 the DOJ 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.

²² The HHI would decrease in the market by 5 points. This decrease results from a pre-merger weighting of Heartland Bank’s market deposits at 50 percent and a post-merger weighting at 100 percent. *See Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990) (deposits of thrifts are included in pre-merger market share calculations on a 50 percent weighted basis but included at 100 percent in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The pro forma market share of Midland Bank would be 1.11 percent, and 142 competitors would remain.

²³ 12 U.S.C. § 1828(c)(5).

also considers these factors in weighing the possible adverse effects against the public benefits of the transaction, as required by section 4(j) of the BHC Act.²⁴

In evaluating financial condition and future prospects of the proposal, 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 transactions. The Board considers the future prospects of the organizations involved in the proposals 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 proposals 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.

Midland and Midland Bank are well capitalized and would remain so on consummation of the proposed transactions. Midland would acquire LSHC in exchange for a combination of cash and Midland common shares.²⁵ Midland would fund the transaction through a combination of cash on hand and additional fundraising. The asset quality, earnings prospects, and liquidity of Midland are considered consistent with approval. Midland appears to have adequate resources to absorb the costs of the proposal and to complete the integration of Midland Bank's and Heartland Bank's operations. Future prospects also are considered consistent with approval. Based on its review of the record, the Board finds that Midland has sufficient financial resources to effect the proposed transactions.

The Board also has considered the managerial resources of the organizations involved and has reviewed supervisory information and the examination records of Midland and Midland Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with the organizations and their records of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Midland's plans for implementing the proposed transactions. In addition, the Board has considered comments submitted as part of the public comment process. These comments allege weaknesses in Midland's compliance management as it relates to consumer protection practices. Commenters criticized Midland's consumer compliance practices, particularly related to fair lending laws and the CRA.

Midland and Midland Bank are considered to be well managed, and their boards of directors and senior management have significant banking experience. Midland has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions, having successfully completed several acquisitions

²⁴ Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of LSHC "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." 12 U.S.C. § 1843(j)(2)(A). 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"). 12 U.S.C. § 2901 *et seq.*

²⁵ Upon consummation, shareholders of LSHC would acquire a significant number of Midland common shares. The Love family has filed a notice under the Change in Bank Control Act of 1978, as amended, 12 U.S.C. 1817(j), with respect to this share acquisition. The Board is acting separately on this notice.

of banking organizations since 2007. Midland would implement at the combined organization its existing policies, procedures, and controls, which are considered to be satisfactory. Midland's management has the experience and resources that should allow the combined organization to operate in a safe and sound manner. The Board expects that Midland will ensure that its risk management framework and methodologies, including its compliance functions, are commensurate with its new size and complexity.

Based on all the facts of record, including a review of the comments received, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved, as well as the records of effectiveness of Midland and Midland 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.²⁶ 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 depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,²⁷ 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.²⁸

The Board has considered all the facts of record, including reports of examination of the CRA performance of Midland Bank and Heartland Bank, data reported by Midland Bank and Heartland Bank under the Home Mortgage Disclosure Act of 1975, as amended ("HMDA"),²⁹ other information provided by Midland, confidential supervisory information, and the public comments received on the proposals. Two commenters expressed concern over levels of lending based on data released under the HMDA or the CRA. They also asserted that the record failed to establish sufficient public benefit to warrant approval. Each commenter requested that the Board require specific commitments from Midland to improve services to underserved communities. A third commenter withdrew its initial opposition to the proposal and urged approval of the proposed transactions after an affiliate of the commenter reached an agreement with Midland to enhance its community development activities and services to predominantly minority communities in specific ways over the next few years.

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 supervisor of the CRA performance of the relevant institution.³⁰ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting

²⁶ 12 U.S.C. § 2901 *et seq.*

²⁷ 12 U.S.C. § 2901(b).

²⁸ 12 U.S.C. § 2903.

²⁹ 12 U.S.C. 2801 *et seq.*

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

the credit needs of its entire community, including LMI neighborhoods.³¹ 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 Midland Bank. Midland Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of St. Louis ("Reserve Bank") following an examination that commenced in October 2013 and was delivered to Midland Bank in July 2014 ("Midland Bank Evaluation").³² This was the first CRA examination for Midland Bank conducted under the Interagency Procedures for Large Institutions; the previous CRA examination was conducted under procedures for intermediate small institutions. Because the operations of Midland Bank are concentrated in Illinois, with a relatively small presence in the St. Louis Metropolitan Statistical Area ("MSA"), examiners gave primary consideration to Midland Bank's performance in Illinois. The CRA examination was conducted during the pendency of this application and was informed by the public comments on the proposal.

Examiners assigned Midland Bank overall component ratings of "high satisfactory" on the Lending Test, "low satisfactory" on the Investment Test, and "low satisfactory" on the Service Test. Examiners described Midland Bank's record of lending as adequate but with opportunities for improvement in certain areas. Midland Bank was described as having a lending record that reflected good responsiveness to assessment area credit needs and a geographically adequate distribution of loans among customers of different income levels and among businesses of different sizes. Examiners identified Midland Bank as a leader in making community development loans in the St. Louis MSA assessment area, with an overall adequate level of community development lending due to low levels in Illinois. Examiners described the bank as maintaining a significant level of community development investments and grants, and making numerous grants to, community development organizations in certain assessment areas, but no community development investments in one assessment area in Illinois.

Examiners found that Midland Bank's record of opening and closing branches in its assessment areas had not adversely affected the accessibility of its delivery systems, but noted that branch hours and services generally did not vary to accommodate customers with variable work schedules. Examiners praised Midland Bank's community development services and systems accessibility in Illinois, while stating that its delivery systems, including branches, in the St. Louis MSA assessment area were located principally outside the St. Louis Missouri-Illinois urban area (as determined by the 2010 United States Census), making it difficult to serve the urban areas of the assessment area where the majority of LMI census tracts are located. Examiners also found that Midland Bank made use of innovative and/or flexible products in its assessment areas.

Thus, Midland Bank received a mixture of praise and suggestions for improvement from examiners in connection with the determination by examiners that its overall performance was "satisfactory." During the course of the Midland Bank Evaluation, examiners did not find any evidence that Midland Bank engaged in discriminatory or other illegal credit practices.

³¹ 12 U.S.C. § 2906.

³² The evaluation periods for the Midland Bank Evaluation were January 1, 2011, to December 31, 2012, for HMDA and small farm lending; June 4, 2011, to December 31, 2012, for small business lending; and August 22, 2011, to October 15, 2013, for community development loans, investment, and service activities.

CRA Performance of Heartland Bank. Heartland Bank was assigned an overall “satisfactory” rating at its most recent CRA performance evaluation by the Office of the Comptroller of the Currency (“OCC”) following an examination that commenced in August 2013 (“Heartland Bank Evaluation”). Heartland Bank received a “satisfactory” rating for the Lending Test and an “outstanding” rating for the Community Development Test.³³ In evaluating the Lending Test in the St. Louis assessment area, OCC examiners concluded that Heartland Bank’s lending to individuals with different income levels was excellent and that lending to businesses of different sizes was reasonable. Examiners found that the geographic distribution of loans in the St. Louis assessment area reflected reasonable dispersion. Examiners also found that Heartland Bank made a high level of community development loans that reflected excellent responsiveness to the need for affordable housing in the assessment area. Examiners found that Heartland Bank’s community development investments reflected adequate responsiveness, while its community development services reflected reasonable responsiveness to the needs of the assessment area. In particular, examiners noted that Heartland Bank’s branch and ATM network, along with online and mobile banking, made it reasonably accessible to geographies and individuals with different income levels.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Midland Bank and Heartland Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Midland Bank Evaluation and the Heartland Bank Evaluation, assessed the records of Midland Bank and Heartland Bank in helping to meet the credit needs of their communities, and considered the comments received on the proposals as well as other agencies’ views on the records of performance of Midland Bank and Heartland Bank under fair lending laws. The Board also considered Midland Bank’s fair lending policies and procedures. As noted, the Midland Bank Evaluation was conducted during the pendency of this application and was informed by the public comments on the proposals. In addition, in response to the public comments on the proposal, the Reserve Bank conducted a fair lending examination during the pendency of this application, including a redlining review across Midland Bank’s assessment areas. The Board has relied on the findings of that examination as part of its analysis.

HMDA Data and Fair Lending Analysis. The commenters criticized Midland Bank’s record of mortgage lending to minority individuals based generally on their review of 2011 and 2012 HMDA data for the bank’s five CRA assessment areas, with emphasis on the bank’s St. Louis MSA assessment area.³⁴ The commenters asserted that Midland Bank’s volume of mortgage loans to African American, Hispanic, and Asian individuals and to minority communities has been extremely low compared to the volume of loans originated to these populations and communities by the aggregate of all lenders and compared to the demographics of those areas.³⁵

Midland Bank’s branches in the St. Louis MSA assessment area are in suburban or rural areas on the outskirts of the MSA. Midland Bank argued that its lending activities in

³³ The Heartland Bank Evaluation was conducted using Small Bank CRA evaluation procedures in Heartland Bank’s two assessment areas of St. Louis, Missouri, and Denver, Colorado. For the Lending Test, examiners reviewed data from January 1, 2011, to December 31, 2012. For the Community Development Test, examiners reviewed data from June 17, 2008, to August 29, 2013.

³⁴ One commenter’s discussion of Midland Bank’s HMDA data covered the years 2009 through 2012.

³⁵ Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders 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.

the St. Louis MSA assessment area were appropriate given its relatively small economic presence in the market. Midland Bank identified community development organizations and projects with which it was involved, as well as organizations and projects with which Heartland was involved. Midland has stated that it expects to continue Heartland Bank's participation in community-based programs.

The Board analyzed Midland Bank's HMDA data for 2011, 2012, and 2013 in the St. Louis MSA, Champaign-Urbana MSA, Chicago-Naperville-Michigan City CSA, Central Illinois, and Northern Illinois assessment areas. The Board analyzed data related to HMDA-reportable loans to develop a view of Midland Bank's overall lending patterns, as well as the subsets of those data related specifically to the public comments received on the proposed transactions. The Board analyzed each bank's combined assessment areas and the specific market areas addressed in the public comments. Within those data sets, the Board focused its review on data related to concerns highlighted by the public comments, including lending to minority individuals and communities and to LMI individuals and communities.

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.³⁶ 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 Board's review generally confirmed the levels of lending by Midland Bank to African American, Hispanic, Asian, and LMI borrowers and the denial disparity ratios noted by the commenters. The Board notes that Midland Bank's record of lending to LMI tracts and to majority-minority tracts generally exceeds that of the aggregate, but that the volume of applications is low compared to the aggregate. As part of the Midland Bank Evaluation, examiners found that Midland Bank had good lending activity and a high percentage of loans in its assessment areas, and that it makes use of innovative and/or flexible products throughout its assessment areas. Midland Bank's percentage of applications from and loans to LMI borrowers for these loan types generally exceeded the aggregate in the St. Louis MSA assessment area. However, with respect to conventional home purchase, refinancing, and home improvement loans, Midland Bank's lending data in the St. Louis MSA assessment area showed low levels of applications from minority individuals, as well as a low level of loans to those in predominantly minority and LMI census tracts.³⁷

³⁶ 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, information on 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) is not always available from HMDA data.

³⁷ The Board analyzed Heartland Bank's 2011, 2012, and 2013 HMDA data in its primary market, the St. Louis MSA assessment area. Commenters focused on the St. Louis MSA assessment area and were generally favorable when discussing Heartland Bank's mortgage lending record relative to the aggregate. Commenters expressed concern that the acquisition of Heartland Bank by Midland would remove an above average lender from the market while increasing the presence of a lender with an inferior record of serving the needs of the community. The Board reviewed Heartland Bank's HMDA data and confirmed that in 2011, 2012, and 2013,

The Board considered and placed great emphasis on information collected by, and on the assessment of, the Reserve Bank's fair lending examiners. As noted, contemporaneously with the Midland Bank Evaluation, Reserve Bank examiners conducted a fair lending and redlining review at Midland Bank, including a review of matters related to the concerns raised by the commenters. While examiners noted a low volume of applications from minority individuals, examiners found no significant disparities in denials in areas with high minority populations.

Examiners focused their review on Midland Bank's branching and marketing practices in each of Midland Bank's assessment areas. Commenters expressed concerns over Midland Bank's branch locations, currently and when combined with Heartland Bank's branches. Specifically, commenters stated that none of Midland Bank's 32 branches is in a majority-minority tract or a low-income tract, while two are in moderate-income tracts. For the St. Louis MSA assessment area, commenters observed that none of Midland Bank's 11 current branches is located in the city of St. Louis, which contains a high percentage of the assessment area's LMI tracts and majority-minority tracts, and that none of Heartland Bank's 11 Missouri branches is located in majority-minority tracts. Examiners generally observed that Midland Bank has expanded its geographic reach outward from a small core presence in Illinois, primarily through a series of acquisitions. Examiners found that the geographic expansion appeared to have been undertaken without deliberate avoidance of majority-minority census tracts.

For instance, in the St. Louis MSA, most of Midland Bank's branches are located in southwestern Illinois, technically within the MSA but on its suburban and rural outskirts. The acquisition of these branches was part of an outward accretion of Midland's presence in that area. One branch currently within the St. Louis MSA was not in the MSA when Midland Bank acquired the branch, but the MSA was later expanded. Midland Bank's two branches within the urban portions of the St. Louis MSA are on the outer edges of the urban area. Examiners further noted that, although its branches were generally in rural or suburban areas, Midland Bank's pattern of branching suggests movement towards the majority-minority census tracts at the core of the St. Louis MSA. Branching patterns in Midland Bank's other assessment areas, including the Joliet-Kankakee and Champaign MSAs, were similar to Midland Bank's expansion in the St. Louis MSA.

Examiners concluded that Midland Bank's policies and procedures to address fair lending risks, and the implementation of those policies and procedures, were satisfactory. Examiners identified several areas for improvement, including opportunities to expand marketing; to enhance fair lending compliance management and monitoring; and to evaluate its marketing, outreach, and branching practices to ensure that majority-minority areas and customers are being adequately served.

Midland Bank is addressing the identified areas for improvement and, in connection with this transaction, has committed to continue doing so. For example, Midland Bank recently hired a Community Development and CRA Officer with experience in the St. Louis area, has begun working more closely with community groups in its assessment areas, and has enhanced its fair lending policies and procedures as directed. Midland Bank has also developed a community development plan and begun its implementation, including updating products and services to better serve low- and moderate-income borrowers and preparing to open a branch in a majority-minority, low-income census tract in Joliet, Illinois.

Heartland Bank's percentages of loans to African Americans exceeded those of the aggregate and, for Hispanics, generally exceeded those of the aggregate. In addition, Heartland Bank's percentages of loans to LMI borrowers consistently exceeded those of the aggregate. As discussed above, Midland Bank has stated that it will continue Heartland Bank's participation in community-based programs.

Midland Bank's Small Business Lending Record. Commenters generally noted that Midland Bank's record of originating small business loans in LMI tracts improved significantly from 2011 to 2012. However, commenters argued that the bank's lending volume could be improved in LMI areas, particularly in the St. Louis MSA assessment area. The Midland Bank Evaluation found Midland Bank's record of lending to businesses of different sizes to be adequate or good in its assessment areas. In addition, Midland Bank's volume of loans to LMI tracts generally met or exceeded the aggregate for the periods reviewed.

Midland Bank's Fair Lending Program. Midland Bank has established policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations, and these are considered satisfactory from a supervisory perspective. Midland Bank's compliance program is included as part of its overall risk management and involves participation of the compliance department, committees of the board of directors, senior management, and employees. Midland Bank's public community development plan states that it will continue to maintain fair lending policies and practices that meet all legal requirements, including continuing to conduct a second review of all loans initially denied, continuing to require all employees and directors involved in lending to complete annual fair lending training, and seeking to ensure that third-party agents involved in Midland Bank's lending activities receive appropriate fair lending training.

Senior staff at Midland Bank conduct quarterly compliance testing, and Midland Bank has retained an independent third-party vendor to conduct annual compliance testing. Midland Bank also periodically retains third parties to conduct comprehensive reviews of its loan operations. As noted, Midland Bank has hired a new Community Development and CRA Officer and is in the process of adding personnel to its compliance staff and considering enhancements to its compliance systems.

Certain lines of business have enhanced compliance oversight. Underwriting, pricing, and policy exceptions for residential mortgages are reviewed by senior staff, with denials subjected to a second review. Midland Bank's Loan Committee receives reports on exceptions on a monthly basis. Similarly, Midland Bank has taken steps to more closely monitor dealers involved in its indirect auto lending program. Midland Bank's risk-management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization, with modifications Midland Bank has been making in anticipation of the proposed transactions.

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. As noted, commenters asserted that the proposed transactions would not product sufficient public benefits to warrant approval of the proposed transactions.

The Board has considered that the proposed transactions would allow Midland to expand the range of financial products and services available to existing customers of Heartland Bank. Following consummation of the proposed transactions, Heartland Bank's customers would gain access to additional services provided by Midland Bank, such as investment management, trust services, private banking, brokerage services, and expanded card products. In addition, customers of both institutions would benefit from a more expansive branch and ATM network. The proposed transactions would provide the opportunity for operational efficiencies, cost savings, and revenue enhancement for the combined organization.

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 Midland, confidential supervisory information, the public comments on the proposals, and commitments made by Midland. Based on the Board's assessment of the CRA performance and consumer compliance programs of Midland Bank and Heartland Bank, its review of examination reports, its analysis of the HMDA data, 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 the proposed transactions, is consistent with approval of the proposals.

The Board expects Midland to continue to make progress in addressing areas identified for improvement. In order to ensure that Midland continues to do so, Midland has committed to the Board that it will make specific enhancements related to its marketing and outreach, compliance management and monitoring, and branching before undertaking any future expansion.

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 the Bank Merger Act.³⁸

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.³⁹ 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.⁴⁰

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation of the proposed transactions, Midland would have approximately \$2.6 billion in consolidated assets and would be outside the largest 100 financial institutions in the United States. 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

³⁸ 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.

³⁹ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

⁴⁰ For further discussion of the financial stability standard, see *Capital One Order* at 28.

significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in the proposed transactions. The companies engage, and Midland would continue to engage, in traditional 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, Midland's intrafinancial assets and liabilities would constitute a negligible share of the system-wide total, both before and after the transaction. The resulting organization would not engage in complex activities or provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

In light of all the facts and circumstances, the proposed transactions 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.

Additional Public Benefits of the Proposals

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."⁴¹ As noted, commenters asserted that the proposed transactions would not produce sufficient public benefits to warrant approval of the proposed transactions. As discussed above, the Board has considered that the proposed transactions would allow Midland Bank to expand the range of financial products and services available to existing customers of Heartland Bank. The Board has determined that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this order is 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 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 these proposals. 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.

Establishment of Branches

As noted, Midland Bank has applied under section 9 of the FRA to establish branches at the current locations of Heartland Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.⁴² Specifically, the

⁴¹ 12 U.S.C. § 1843(j)(2).

⁴² 12 U.S.C. § 322; 12 CFR 208.6.

Board has considered Midland 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.⁴³

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposals should be, and hereby are, approved.⁴⁴ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. Approval of the proposals is specifically conditioned on compliance by Midland with all commitments made in connection with these proposals 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 transactions may not be consummated before the fifteenth calendar day after the effective date of this order or later than three months after the date of this order unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective December 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 in Missouri to Be Established by Midland Bank

St. Louis

1. 7818 Bonhomme Avenue
2. 1 McKnight Place
3. 9925 Clayton Road
4. 9877 Manchester and Berry Roads

⁴³ Under section 9 of the Federal Reserve Act, state member banks are subject to the branching restrictions that apply to national banks. Thus, state member banks are permitted to establish branches at locations acquired through acquisition if the branches are located in states where the state member bank had a presence prior to the acquisition. 12 U.S.C. § 36(e). In addition, Dodd-Frank Act section 341 provides authority for savings associations that become banks to continue to operate branches that they operated immediately before becoming banks. Dodd-Frank Act § 341, codified at 12 U.S.C. § 5451.

⁴⁴ Several commenters requested that the Board hold a public hearing on the proposed transactions. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenters' requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposals and, in fact, submitted written comments that the Board has considered in acting on the proposals. The commenters' requests fail to identify disputed issues of fact that are material to the Board's decision and would be clarified by a public hearing. In addition, the requests fail to demonstrate why the written comments do not present the commenters' views adequately or why a hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the requests for a public hearing on the proposals are denied.

- 5. 11670 Gravois Road
- 6. 13402 Clayton Road
- 7. 212 South Central Avenue

Arnold

- 8. 1920 Richardson Road

Chesterfield

- 9. 14125 Clayton Road

O'Fallon

- 10. 2341 Highway K

St. Charles

- 11. 5991 South Highway 94

St. Clair

- 12. 815 North Commercial Avenue

Branch in Colorado to Be Established by Midland Bank

Denver

- 13. 100 Garfield Street, Suite 100

Southside Bancshares, Inc.

Tyler, Texas

Order Approving the Acquisition of a Savings and Loan Holding Company
FRB Order No. 2014-21 (December 10, 2014)

Southside Bancshares, Inc. ("Southside"), Tyler, Texas, a bank 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 Act and section 225.24 of the Board's Regulation Y¹ to acquire OmniAmerican Bancorp, Inc. ("OmniAmerican"), and thereby indirectly acquire its subsidiary savings association, OmniAmerican Bank, both of Fort Worth, Texas. Immediately following the proposed acquisition, OmniAmerican Bank would be merged into Southside's subsidiary bank, Southside Bank, Tyler, Texas.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the *Federal Register* (79 *Fed. Reg.* 33918 (June 13, 2014)). 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 section 4 of the BHC Act.

Southside, with total consolidated assets of approximately \$3.5 billion, is the 230th largest insured depository organization in the United States, controlling approximately \$2.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits in the United States. Southside Bank operates branches only in Texas. Southside Bank is the 22nd largest depository institution in Texas, controlling deposits of approximately

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

² The merger of OmniAmerican Bank into Southside Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC") under the Federal Deposit Insurance Act and by the Texas Department of Banking ("State") under state law. The FDIC approved the merger on November 7, 2014, and State approved the merger on December 5, 2014.

\$2.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.³

OmniAmerican, with total consolidated assets of approximately \$1.3 billion, is the 502nd largest insured depository organization in the United States, controlling approximately \$837 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits in the United States. OmniAmerican Bank is a savings association that operates branches only in Texas. OmniAmerican Bank is the 67th largest insured depository institution in Texas, controlling deposits of approximately \$837 million, which represent less than 1 percent of the total deposits of insured depository institutions in the state.

On consummation of the proposal, Southside would become the 18th largest depository organization in Texas, with total consolidated assets of approximately \$4.8 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. In Texas, Southside Bank would control total consolidated deposits of approximately \$3.6 billion, which would represent less than 1 percent of the total deposits of insured depository institutions in the state.

Factors Governing Board Review of the Transaction

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

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of OmniAmerican “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.”⁶ As part of its evaluation of these factors, the Board reviews the financial and managerial resources of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the proposal.⁷ In acting on a notice to acquire a savings association, the Board reviews the records of perfor-

³ Deposit data are as of June 30, 2014. Asset data are as of June 30, 2014. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁴ 12 CFR 225.28(b)(4)(ii).

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

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

⁷ 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).

mance of the relevant insured depository institutions under the Community Reinvestment Act (“CRA”).⁸

Competitive Considerations

As part of the Board’s consideration of the factors under section 4 of the BHC Act, the Board has evaluated the competitive effects of Southside’s acquisition of OmniAmerican in light of all the facts of record. Southside and OmniAmerican compete directly in the Dallas and Fort Worth banking markets, both in Texas.⁹ The Board has considered the competitive effects of the proposal in these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in insured depository institutions in the markets (“market deposits”) controlled by Southside and OmniAmerican,¹⁰ 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”),¹¹ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in both the Dallas and Fort Worth banking markets. On consummation of the proposal, the Dallas banking market would remain highly concentrated and the Fort Worth banking market would remain unconcentrated. The HHI change would be minimal and would decrease in both markets. Numerous competitors would remain in both markets.¹²

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

For purposes of the BHC Act, the home state of both Southside and OmniAmerican is Texas 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 Southside controlling less than 1 percent of the deposits of U.S. insured depository institutions.

⁹ The Dallas banking market is defined as Dallas and Rockwall counties; the southeastern quadrant of Denton County, including Denton and Lewisville; the southwestern quadrant of Collin County, including McKinney and Plano; the communities of Forney and Terrell in Kaufman County; and Midlothian, Waxahachie, and Ferris in Ellis County, all in Texas (the “Dallas banking market”). The Fort Worth banking market is defined as Tarrant, Johnson, and Wise counties; Parker County (minus Mineral Wells); and the southwestern quadrant of Denton County, including Roanoke, all in Texas (the “Fort Worth banking market”).

¹⁰ Deposit and market share data are as of June 30, 2013, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

¹² The HHI would decrease in each market as follows: 1 point to 1807 in the Dallas banking market and 15 points to 929 in the Fort Worth banking market. Those decreases result from a pre-merger weighting of OmniAmerican’s market deposits at 50 percent and a post-merger weighting at 100 percent. See *Norwest Corporation*, 78 *Federal Reserve Bulletin* 452 (1992); *First Banks, Inc.*, 76 *Federal Reserve Bulletin* 669 (1990) (deposits of thrifts are included in pre-merger market share calculations on a 50 percent weighted basis but included at 100 percent

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

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

Financial and Managerial Resources

The Board considered the financial and managerial resources of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important.

The Board has considered the financial factors of the proposal. Southside and Southside Bank are well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a cash and share exchange, and total consideration for the transaction would be approximately \$307 million. Southside has the resources to fund the proposed transaction. Southside is in satisfactory condition, and the asset quality, earnings, and liquidity of Southside Bank and OmniAmerican Bank weigh in favor of approval. Based on its review of the record, the Board finds that the organizations have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Southside, Southside Bank, OmniAmerican, and OmniAmerican Bank, including assessments of their management expertise, internal controls, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and the organizations' records of compliance with applicable banking laws and with anti-money-laundering laws.

Southside and Southside Bank are considered to be well managed. Southside's existing risk-management program and its directorate and senior management are considered satisfactory. The current and proposed directors and senior executive officers of Southside have substantial knowledge of, and experience in, the banking and financial services sectors. There will be no changes in the senior management of Southside following consummation of the proposal.¹³

in the calculation of pro forma market share because the deposits would be acquired by a commercial banking organization). The resulting pro forma shares of Southside's market deposits would be as follows: less than 1 percent in the Dallas banking market and 2.75 percent in the Fort Worth banking market.

¹³ On consummation, Southside's board of directors will include two additional directors from OmniAmerican's current board of directors.

The Board also has considered Southside's plans for implementing the proposal. Southside is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Southside would implement its risk-management policies, procedures, and controls at the combined organization. Southside's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Southside plans to integrate OmniAmerican's existing management and personnel in a manner that augments Southside Bank's management team.

Southside's integration record, managerial and operational resources, and plans for operating the combined institutions after consummation provide a reasonable basis to conclude that managerial factors weigh in favor of approval. Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved, as well as the record of effectiveness of the organizations in combatting money-laundering activities, on balance weigh in favor of approval.

Record of Performance under the CRA

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

The Board has considered all the facts of record, including reports of examination of the CRA performance records of Southside Bank and OmniAmerican Bank, data reported by Southside Bank and OmniAmerican Bank under the Home Mortgage Disclosure Act ("HMDA"),¹⁶ other information provided by Southside, confidential supervisory information, and the public comment received on the proposal. The commenter objected to the proposal on the basis of the mortgage lending records of Southside Bank and OmniAmerican Bank as reflected in 2012 HMDA data.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the proposal in light of the examinations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions.¹⁷ The CRA requires that the appropriate federal financial supervisory agency for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.¹⁸ 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.

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

¹⁵ 12 U.S.C. § 2903.

¹⁶ 12 U.S.C. § 2801 *et seq.*

¹⁷ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Fed. Reg.* 11642 at 11665 (March 11, 2010).

¹⁸ 12 U.S.C. § 2906.

CRA Performance of Southside Bank. Southside Bank was assigned an “outstanding” rating at its most recent CRA performance evaluation by the FDIC, in July 2013 (“Southside Evaluation”). Examiners concluded that Southside Bank demonstrated an excellent responsiveness to the credit needs of its assessment areas.¹⁹ Southside Bank received a “high satisfactory” rating on the Lending Test, and an “outstanding” rating on the Investment Test and the Service Test.²⁰ For the Lending Test, the FDIC noted that the bank’s lending activity level and geographic distribution of loans were good. Southside Bank ranked as the largest small business lender and third largest mortgage lender in the Tyler MSA, which had the greatest weight of all areas in the analysis. Examiners also noted that the institution displayed extensive use of innovative and flexible lending practices. Examiners noted that Southside Bank was a leader in making community development loans. Examiners further highlighted Southside Bank’s issuance of community development loans in the Tyler MSA. Examiners noted that Southside Bank had actively participated in an Economic Development Program sponsored by the Federal Home Loan Bank of Dallas, funded FHA and VA loans, and participated in several affordable housing programs.

Concerning the Investment Test, examiners highlighted Southside Bank’s significant level of qualified community development investments and grants in its assessment areas. Southside Bank also was noted as being excellent in responding to the community needs both in its assessment area and statewide. In addition, Southside Bank had a significant record of participating in investments not routinely provided by private investors.

For the Service Test, examiners noted Southside Bank’s strong performance, from its readily accessible delivery systems to its tailored retail banking services. The accessibility of retail banking services has improved within the Tyler MSA. Examiners further emphasized that Southside Bank provided a relatively high level of community development services that were responsive to a variety of community development needs.

The FDIC reviewed Southside Bank’s CRA performance in its review of the related Bank Merger Act application, including public comments similar to those submitted to the Board, and, in approving the application under the Bank Merger Act, found the proposal consistent with the purposes of the CRA.

CRA Performance of OmniAmerican Bank. The Office of the Comptroller of the Currency (“OCC”) assigned OmniAmerican Bank an overall CRA rating of “satisfactory” at its most recent CRA examination on April 2, 2012 (“OmniAmerican Evaluation”).²¹ Examiners concluded that OmniAmerican Bank demonstrated a good responsiveness to the credit needs of its assessment areas.²² OmniAmerican Bank received ratings of “high satisfactory” for the Lending Test and the Service Test and “low satisfactory” for the Investment Test. With respect to the Lending Test, examiners noted that OmniAmerican Bank’s lending activity reflected good responsiveness, and a majority of home mortgage loans, OmniAmerican Bank’s primary loan product, were made within its assessment area. The

¹⁹ Examiners focused on small business and home mortgage loans, given these are a majority of Southside Bank’s loans, and put marginally more weight on Southside Bank’s small business loans. In addition, examiners focused on the Tyler Metropolitan Statistical Area assessment area (“Tyler MSA”) because of Southside Bank’s significant presence in that area.

²⁰ The evaluation period for the Lending, Investment, and Service Tests in the Southside Evaluation was April 26, 2010, to July 29, 2013, except for community development loans, for which the evaluation period was from January 1, 2012, through December 31, 2012.

²¹ The evaluation period for the Lending, Investment, and Service Tests in the OmniAmerican Evaluation was from January 1, 2009, through December 31, 2011, except for community development loans, for which the evaluation period was from May 13, 2008, through April 1, 2012.

²² Examiners focused on home mortgage loans, given that these comprise a majority of OmniAmerican Bank’s loans. In addition, examiners focused on the Fort Worth Metropolitan Statistical Area assessment area (“Fort Worth MSA”) because of OmniAmerican Bank’s significant presence in that area.

geographic distribution of home mortgage products was good and the distribution of loans to small businesses was excellent. The borrower distribution of such loans among borrowers of different incomes was adequate. The examiners noted that they did not detect any conspicuous or unexplained gaps in the bank's lending patterns.

Concerning community development lending, examiners found that OmniAmerican Bank's level of community development activities was adequate given its size, capacity, and the community development needs and opportunities of its assessment areas. Examiners highlighted OmniAmerican Bank's participation in specialized loan programs sponsored by the City of Arlington, Texas, including homebuyer assistance and neighborhood stabilization programs. These are assistance programs for first-time or LMI borrowers.

With respect to the Investment Test, examiners noted that although OmniAmerican Bank's qualified investments were not particularly innovative or complex, they were responsive to the community development needs in the Fort Worth MSA. OmniAmerican Bank's investments were focused in a Community Capital CRA qualified Investment Fund, which consists of various mortgage-backed securities that are fully allocated to loans benefitting LMI neighborhoods within the bank's assessment areas and small businesses by way of SBA loans.

Examiners also reviewed the bank's lending policies and procedures, including the fair lending policy. Veritex Bank has instituted policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations. Veritex Bank has a formal fair lending compliance program, which includes a training program and a fair lending compliance webinar for all employees. Veritex Bank also has a centralized consumer complaints process for resolving any complaints. Veritex bank completes internal fair lending audits and contracts with an external firm to perform semi-annual audits.

Fair Lending Record, HMDA Analysis, and Public Comment on the Proposal

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

The commenter alleged that 2012 HMDA data indicate that, in the Tyler MSA, Southside Bank made fewer conventional home purchase loans to African American than to white applicants, fewer refinancing loans to African American and Hispanic applicants than to white applicants, and fewer home improvement loans to African American than to white applicants. The commenter also asserted that, in the Tyler MSA, Southside Bank disproportionately denied applications by African American applicants for conventional home purchase loans and refinancing loans and by Hispanic applicants for refinancing loans. In addition, the commenter alleged that OmniAmerican Bank made fewer conventional home purchase and refinancing loans to African American applicants in the Fort Worth MSA. The commenter also asserted that OmniAmerican Bank disproportionately denied applications by African American applicants for conventional home purchase loans and refinancing loans and by Hispanic applicants for refinancing loans.

The Board has reviewed HMDA data from 2012 and 2013 reported by Southside Bank and OmniAmerican Bank, the most recent publicly available data. The Board analyzed data related to all HMDA-reportable loans in the Tyler and Fort Worth markets to develop a

view of overall lending patterns, as well as the subset of that data related specifically to conventional home purchase, home improvement, and refinancing loans, which were the subjects of the public comment received on the proposal. Within those data sets, the Board focused its review on data related to loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

With respect to Southside Bank and OmniAmerican Bank, the Board generally confirmed the HMDA data regarding levels of loans and the denial disparity ratios associated with conventional home purchase, home improvement, and refinance loans noted by the commenter. The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether Southside Bank or OmniAmerican Bank has excluded or denied credit to any group on a prohibited basis.²³

Because of the limitations of HMDA data, the Board also has considered other information, including examination reports that provide on-site evaluations of compliance by Southside Bank and OmniAmerican Bank with fair lending laws and regulations. The Board has considered that Southside Bank's 2012 HMDA data were reviewed and considered by examiners in the FDIC's July 2013 CRA performance evaluation. This review allowed examiners to consider specific lending information beyond the data reported in HMDA. This evaluation by examiners found no evidence of discriminatory lending practices and resulted in an "outstanding" rating. The Board also consulted with the FDIC with respect to Southside Bank's record of fair lending performance since the Southside Evaluation, including its operations and compliance program, policies and procedures, training efforts, monitoring practices, underwriting guidelines, and responses to consumer complaints. The Board also considered the FDIC's analysis of the comments against Southside Bank's bank merger filing, which was reviewed and approved by the FDIC.

With respect to OmniAmerican Bank HMDA data on conventional home purchase or refinance loans cited by the commenter, the Board consulted with the OCC, which found no evidence of disparate treatment in its review of OmniAmerican Bank's actual lending practices. The lending policies, processes, and practices were found by the OCC to support a lending culture wherein OmniAmerican Bank was ensuring fair treatment to all applicants.

Southside's Fair Lending Program. Southside Bank's risk-management systems, policies, and procedures for assuring compliance with fair lending laws would be implemented at the combined organization, and these are considered to be satisfactory from a supervisory perspective. Southside has represented that it has a detailed and comprehensive consumer compliance and fair lending program. This includes a secondary review of all denied loan applications to ensure that the reasons for denial are well documented, supported by the applicant's application data, and outside of Southside's underwriting guidelines. Southside has also indicated that it performs a monthly analysis to help identify any patterns of dis-

²³ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

crimination and that it conducts weekly tracking of pricing exceptions for all consumer loans and daily tracking for all mortgage loans. In addition, Southside has indicated that it performs an annual fair lending risk assessment, the results of which are presented to its board of directors, and that all Southside employees who accept loan applications or answer loan questions are required to participate in fair lending training annually.

A. Conclusion on CRA, Fair Lending, and HMDA Review

The Board has considered all of the facts of record, information provided by Southside, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of Southside Bank's and OmniAmerican Bank's mortgage lending operations and compliance programs, its review of examination reports, the CRA records of the institutions involved, and its consultations with the FDIC and OCC, the Board concludes that the CRA and fair lending records of Southside Bank and OmniAmerican Bank on balance weigh in favor of approval.

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.²⁴ 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.²⁵ In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution's internal organization, which are indicative of the relative degree of difficulty of resolving the resulting firm. A financial institution that can be resolved in an orderly manner is less likely to inflict material damage to the broader economy.²⁶

The Board has considered information relevant to risks to the stability of the United States banking or financial system. After consummation, Southside would have approximately \$4.8 billion in total consolidated assets, and by any of a number of alternative measures of firm size, Southside would be outside the 100 largest U.S. financial institutions. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or results in a firm with less than \$25 billion in total consolidated assets, will not pose significant risks to the financial stability of the United States absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors. Such additional risk factors are not present in this transaction. The Board, therefore, concludes that financial stability considerations relating to this proposal weigh in favor of approval.

²⁴ Dodd-Frank Act, § 604(e), codified at 12 U.S.C. § 1843(j)(2)(A). Other provisions of the Dodd-Frank Act impose a similar requirement, that the Board consider or weigh the risks to financial stability posed by a merger, acquisition, or expansion proposal by a financial institution. *See* sections 163, 173, and 604(d) and (f) of the Dodd-Frank Act.

²⁵ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

²⁶ For further discussion of the financial stability standard, *see Capital One Order* at 28.

Additional Public Benefits of the Proposal

As noted above, in connection with a notice under section 4(c)(8) of the BHC Act, section 4(j) of the Act requires the Board to “consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”²⁷

The Board has also considered the extent to which the proposal would benefit the customers of Southside Bank and OmniAmerican Bank. Among other things, such benefits can include merger-related cost savings, improvements in the quality of existing product offerings, and the availability of products that were not previously available to customers of any of the parties.

Southside expects that, as a result of the merger, Southside Bank’s customers would have access to a variety of consumer and business services. The merger would extend the branch and ATM footprints of Southside Bank within the Dallas and Fort Worth banking markets. This would include full-service branches in five counties, allowing customers greater geographic flexibility in accessing banking services. Southside Bank will continue to offer its products and services, which are substantially the same as, and in many cases broader than, products and services offered by OmniAmerican Bank.

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

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the proposal should be, and hereby is, approved.²⁸ 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

²⁷ 12 U.S.C. § 1843(j)(2).

²⁸ The public commenter requested that the Board hold a public hearing on the proposal. The Board’s regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately present their views. The Board has considered the commenter’s request in light of all the facts of record. In the Board’s view, 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 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.

BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Southside with the conditions imposed in this Order and the commitments made to the Board in connection with the notice. The Board's approval also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),²⁹ and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 10, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Orders Issued Under Federal Reserve Act

Central Bank of Audrain County Mexico, Missouri

Order Approving the Acquisition of Assets, Assumption of Liabilities, and the Establishment of a Branch

FRB Order No. 2014-17 (October 17, 2014)

Central Bank of Audrain County ("Audrain Bank"), Mexico, Missouri,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 acquire certain assets and assume certain liabilities of First State Community Bank ("First State"), Farmington, Missouri, a state nonmember bank.³ In addition, Audrain Bank has applied under section 9 of the Federal Reserve Act ("FRA")⁴ to establish and operate a branch at the location of the acquired branch of First State.

²⁹ 12 CFR 225.7 and 225.25(c).

¹ Audrain Bank is a wholly owned subsidiary of Central Banccompany, Inc. ("Central BHC"), of Jefferson City, Missouri, a bank holding company with total consolidated assets of approximately \$10.8 billion (as of June 30, 2014) that has operations in Missouri and Oklahoma. On July 16, 2014, the Federal Reserve Bank of St. Louis approved Audrain Bank's application to convert to a state member bank, and Audrain Bank changed its name from First National Bank of Audrain County.

² 12 U.S.C. § 1828(c).

³ In particular, Audrain Bank seeks to acquire the Vandalia, Missouri, branch of First State located at 1000 West Highway 54, Vandalia, Missouri 63382. First State is a subsidiary of Cooper Investments, Inc., Farmington, Missouri.

⁴ 12 U.S.C. § 321.

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.

Audrain Bank's holding company, Central BHC, is the sixth largest depository organization in Missouri, controlling deposits of approximately \$7.0 billion, which represent approximately 4.6 percent of the total amount of deposits in insured depository institutions in Missouri ("state deposits").⁶ Audrain Bank proposes to acquire approximately all of the deposits from the Vandalia branch of First State, which total approximately \$13.7 million. On consummation of the proposal, Central BHC would remain the sixth largest depository organization in Missouri, controlling deposits of approximately \$7.0 billion, which represent approximately 4.6 percent of the total amount of state deposits.

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.⁷ 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 the communities to be served.⁸

Audrain Bank and First State compete directly in the Mexico, Missouri, banking market (the "Mexico banking market"), and the branch that Audrain Bank proposes to acquire is located in that market.⁹ The Board has reviewed the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market, the relative share of the total deposits in insured depository institutions in the market ("market deposits") that Audrain Bank would control,¹⁰ 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"),¹¹ and other characteristics of the market.

⁵ 12 CFR 262.3(b).

⁶ Data are as of June 30, 2013. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

⁷ 12 U.S.C. § 1828(c)(5)(A).

⁸ 12 U.S.C. § 1828(c)(5)(B).

⁹ The Mexico, Missouri, banking market is defined as Audrain County, Missouri.

¹⁰ Deposit and market share data are as of June 30, 2013, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation's Summary of Deposits data.

¹¹ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although 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.

In the Mexico banking market, Audrain Bank is the second largest insured depository institution, controlling deposits of approximately \$123.9 million, which represent approximately 32.6 percent of market deposits. The branch that Audrain Bank proposes to acquire currently controls approximately \$13.7 million in market deposits. On consummation of the proposal, Audrain Bank would become the largest insured depository institution in the Mexico banking market, controlling deposits of approximately \$137.6 million. When the initial competitive screening data are used, the combined entity would represent 36.2 percent of market deposits and the HHI would increase by 215 points, from 2777 to 2992.

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 Mexico banking market.¹² In particular, the Board considered the competitive influence of two active community credit unions in the Mexico banking market, United Credit Union and Show Me Credit Union. Each offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the Mexico banking market.¹³ These credit unions control approximately \$62.4 million in market deposits, which represent approximately 7.6 percent of market deposits on a 50 percent weighted basis. With these deposits weighted at 50 percent, after consummation, Audrain Bank would control approximately 33.5 percent of the market deposits, and the HHI would increase by 183 points, from 2402 to 2585. Furthermore, on consummation, a total of six competitors would continue to operate in the market, including the two credit unions and two banks that each control more than 20 percent of the market's deposits. The Board has concluded that these factors mitigate the potential competitive 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.

Based on all the facts of record, the Board concludes that consummation of the proposal is unlikely to have a significantly adverse effect on competition or on the concentration of resources in the Mexico 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 reviewing this proposal under the Bank Merger Act, the Board has considered the financial and managerial resources and future prospects of the institutions involved and certain other supervisory factors. In its evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the pro forma organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of

¹² 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).

¹³ The Board previously has considered competition from certain active credit unions with those features as a mitigating factor. See e.g., *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp.*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.*, (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Regions Financial Corporation*, 93 *Federal Reserve Bulletin* C16 (2007); *Passumpsic Bancorp.*, 92 *Federal Reserve Bulletin* C175 (2006); *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

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 acquiring 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.

Audrain Bank is well capitalized and would remain so on consummation of the proposal. The proposal would be funded by a capital contribution from Central BHC, and neither Audrain Bank nor Central BHC would incur any debt as a result of the transaction. The asset quality, earnings, liquidity, and future prospects of Audrain Bank are consistent with approval. Audrain Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the target branch into Audrain Bank's operations. Based on its review of the record, the Board finds that Audrain Bank has sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of Audrain Bank and has reviewed the examination records of Audrain Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and Audrain Bank's record of compliance with applicable banking and anti-money-laundering laws. The Board also has considered Audrain Bank's plans for implementing the proposal.

Audrain Bank is considered to be well managed, and its board of directors and senior management have significant banking experience. Audrain Bank would operate the acquired branch of First State under Audrain Bank's existing policies and procedures, which are considered to be satisfactory. Audrain Bank's supervisory record, managerial and operational resources, and plans for operating the pro forma institution 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 Audrain Bank, as well as Audrain Bank's record of effectiveness 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 Community Reinvestment Act ("CRA").¹⁴ 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 acquisition proposals.

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

¹⁴ 12 U.S.C. § 2901 *et seq.*

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.¹⁵ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including LMI neighborhoods.¹⁶ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.

CRA Performance of Audrain Bank. Audrain Bank received an overall rating of "satisfactory" at its most recent CRA performance examination by the Office of the Comptroller of the Currency, as of January 2010.¹⁷ Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. In addition, examiners noted that the distribution of loans represented reasonable dispersion among borrowers of different income levels and to farms and businesses of different sizes. Examiners found no evidence of discriminatory or other illegal credit practices. In connection with Audrain Bank's application to convert to a state member bank, the Federal Reserve Bank of St. Louis in May 2014 conducted a limited, off-site review of its CRA performance and found no evidence of discriminatory or other illegal credit practices.

CRA Performance of First State. First State received an overall rating of "satisfactory" at its most recent CRA performance examination by the Federal Deposit Insurance Corporation ("FDIC"), as of February 2014.¹⁸ First State received an "outstanding" rating for the Service Test and "high satisfactory" ratings for both the Investment Test and the Lending Test.

In evaluating the Service Test, FDIC examiners noted that First State's delivery systems are readily accessible to all portions of the bank's assessment areas and that services do not vary in a way that inconveniences certain portions of the assessment areas. The examiners concluded that First State could be considered a leader in community development services.

In evaluating the Investment Test, examiners found that First State exhibited good responsiveness to credit and community economic development needs and occasionally used complex or innovative investments to support community development initiatives. The examiners noted that given the opportunities in First State's assessment areas, the bank has a significant level of qualified community development investments and grants in which it occasionally has a leadership position, and in particular, provides investments and grants that are not routinely provided by private investors.

In evaluating the Lending Test, examiners found that First State's overall lending activity reflected good responsiveness to the credit needs of its assessment areas and that First State originated a substantial majority of its loans, during the period reviewed, in its assessment areas. In addition, examiners noted that the geographic distribution of loans repre-

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

¹⁶ 12 U.S.C. § 2906.

¹⁷ Audrain Bank's CRA evaluation was conducted using Small Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from January 1, 2007, through December 31, 2009.

¹⁸ First State's CRA evaluation was conducted using the Large Institution CRA Examination Procedures, and examiners reviewed the bank's lending activity from November 1, 2010, through February 24, 2014.

sented good penetration throughout the assessment areas and among retail customers of different income levels and among business and farm customers of different revenue sizes. The examiners concluded that First State exhibited a good record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses and farms, consistent with safe and sound banking practices.

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.

Audrain Bank represents that this proposal would result in First State's current customers continuing to have access to banking services in their immediate communities. Moreover, Audrain Bank states that it would expand its services and grow its business in Audrain County. In particular, the acquired branch would be enhanced with a drive-up ATM, additional staff, and new on-site services, all of which would benefit First State's current customers. Audrain Bank plans to consolidate its existing branch in Vandalia into the branch acquired from First State, which is located one block away on the same street.¹⁹

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 Audrain Bank, and confidential supervisory information. Based on the Board's assessment of the CRA performance and consumer compliance programs of Audrain Bank and First State, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA records of the insured depository institutions involved in this transaction, is consistent with approval of the application.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended 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."²⁰

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.²¹ 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

¹⁹ Audrain Bank represents that the closing of its Vandalia branch will be completed in accordance with the bank's branch closing policy and applicable laws and regulations.

²⁰ 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).

²¹ Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

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.²²

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, Central BHC would have approximately \$10.8 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. Audrain Bank 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, Audrain Bank'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.

Establishment of Branch

Audrain Bank has applied under section 9 of the FRA to establish and operate a branch at the location of the acquired branch of First State, and the Board has considered the factors it is required to consider when reviewing an application under that section.²³ Specifically, the Board has considered Audrain 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 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 Audrain Bank with all the commitments made in connection with this proposal and the conditions set forth in this order. The commitments and conditions are

²² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

²³ 12 U.S.C. § 322; 12 CFR 208.6.

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

The transaction may not be consummated before the 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 Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors, effective October 17, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Veritex Community Bank Dallas, Texas

Order Approving Establishment of a Branch FRB Order No. 2014–9 (December 8, 2014)

Veritex Community Bank (“Veritex Bank”), a state member bank subsidiary of Veritex Holdings, Inc., both of Dallas, Texas, 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 2700 Oak Lawn Avenue, Dallas, Texas (the “Oak Lawn branch”).

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.

Veritex Bank is the 89th largest depository institution in Texas, controlling approximately \$613 million in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.⁴ Veritex Bank’s main office is in Dallas, and the bank has eight additional branches throughout Dallas and Collin counties.

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

¹ 12 U.S.C. § 321 *et seq.*

² 12 CFR part 208.

³ 12 CFR 262.3(b).

⁴ Data are as of June 30, 2014, the most recent available, and are updated to reflect mergers through that date. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

⁵ 12 CFR 208.6(b).

⁶ 12 U.S.C. § 2901 *et seq.*

⁷ 12 CFR 208.6(b).

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 Veritex Bank discriminates against African Americans and redlines African American neighborhoods, particularly in Dallas.⁸

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Veritex Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Veritex Bank, and the comment received. Veritex Bank is well capitalized and would remain so on consummation of the proposal. After carefully considering all the facts of record, the Board has concluded that the financial history and condition, capital adequacy, and future earnings prospects of Veritex Bank are consistent with approval of the proposal. The Board also has reviewed Veritex Bank's proposed investment in the Oak Lawn branch and concluded that its investment is consistent with regulatory limitations on investment in bank premises.⁹

In considering Veritex 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 Veritex Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws. Veritex 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 Veritex Bank's management, as well as the records of effectiveness of Veritex Bank in combatting money laundering activities, are consistent with approval of the proposal.

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.¹⁰ In addition, the CRA 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.¹¹

The Board has considered all the facts of record. The Oak Lawn branch would be located in an LMI area and an area where the majority of the residents are minority. The Board has also considered reports of examination of the CRA performance of Veritex Bank, data reported by Veritex Bank under the Home Mortgage Disclosure Act ("HMDA"),¹² other information provided by Veritex Bank, confidential supervisory information, the public comment received on the proposal, and other information. As noted above, a commenter objected to the proposal and alleged that Veritex Bank had engaged in discriminatory lending practices in the Dallas area.

⁸ Redlining is the practice of denying a creditworthy applicant a loan or service in a certain neighborhood even though the applicant may otherwise be eligible for the loan or service.

⁹ 12 CFR 208.21(a).

¹⁰ 12 U.S.C. § 2901(b).

¹¹ 12 U.S.C. § 2903.

¹² 12 U.S.C. § 2801 *et seq.*

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 that institution.¹³ 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.¹⁴ 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.¹⁵

Veritex Bank received a "satisfactory" rating by the Federal Reserve Bank of Dallas ("Reserve Bank") at its most recent CRA performance evaluation, as of November 12, 2013 ("2013 CRA Evaluation"). Veritex Bank received "satisfactory" ratings for the Lending Test and the Community Development Test.¹⁶ Examiners noted that Veritex Bank has been reasonably responsive to the credit needs and community development needs of its assessment areas. Examiners noted that Veritex Bank extended the majority of its loans inside its assessment area and that its distribution of loans to LMI borrowers and to businesses of different sizes was reasonable. More specifically, the examiners found that the geographic distribution of the bank's lending reflected excellent penetration throughout the assessment area, including LMI geographies, given the location of the bank's branches and the competitive local banking environment. In addition, examiners found no evidence of discriminatory or other illegal credit practices and found that the bank was in compliance with the substantive provisions of relevant anti-discrimination laws and regulations. The proposed branch would be located in an LMI area and is expected to provide a source of lending and other banking services to minorities and LMI residents in that area.

Examiners noted that the bank's responsiveness to community development needs was adequate considering its capacity, those needs, and available opportunities. According to examiners, Veritex Bank applied its community development resources to meet community needs, primarily through community development lending initiatives and social services targeted to LMI individuals in its community.

Veritex Bank represents that, since the 2013 CRA Evaluation, it has become a member of the Dallas Mortgage Assistance Program, which assists homebuyers with total household income of less than 80 percent of the Dallas Area median family income to purchase a home within the Dallas city limits. Veritex Bank represented that it is working to launch financial literacy and mortgage awareness programs in LMI areas. In addition, the bank represents that it is working to increase mortgage lending in LMI areas, particularly southern Dallas County, and is working toward developing relationships with non-profit and other small business assistance entities to develop potential loan relationships.

B. Fair Lending and Other Consumer Protection Laws

The Board has considered the record of Veritex Bank in complying with fair lending and other consumer protection laws. As part of this evaluation, the Board reviewed Veritex Bank's 2013 CRA Evaluation and a comprehensive fair lending and redlining review com-

¹³ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665.

¹⁴ 12 U.S.C. § 2906.

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

¹⁶ The 2013 CRA Evaluation was conducted using the Intermediate Small Bank CRA Examination Procedures. For the Lending Test, a sample of small business loans originated from July 1, 2012, through December 31, 2012 was evaluated, as well as Veritex Bank's 2011 and 2012 HMDA data.

pleted by the Reserve Bank at Veritex Bank; assessed Veritex Bank's HMDA data and fair lending policies and procedures; and considered confidential supervisory information, other information, the comment on the application, and the bank's response to the comment.

The Board also considered that the location of the Oak Lawn branch is in an LMI area and an area where the majority of the residents are minority. The proposed branch will be located near West Dallas, a traditionally underserved community, and the bank intends to use the proposed branch's location to establish new deposit and lending relationships with customers in the area. Veritex Bank also represents that the Oak Lawn branch will benefit depositors by improving customer convenience, creating efficiency, and expanding the availability of products and services to banking customers within the underserved community of West Dallas.

Fair Lending Analysis. The Reserve Bank conducted a comprehensive fair lending and redlining review at Veritex Bank contemporaneously with the 2013 CRA Evaluation of Veritex Bank. Based on their entire review, examiners did not find evidence of illegal credit discrimination.

With respect to the bank's branching strategy, examiners found that the majority of Veritex Bank's branches were located in tracts in which 25-50 percent or a majority of the population is minority. Examiners noted that a number of the bank's branches were added as a result of recent acquisitions and that most of the de novo branches have stayed within the footprint established by the acquired banks, with half of such branches being in tracts where 25-50 percent of the population is minority at the time of the examination. Examiners did not find any disparity in access to products and services between branches in tracts that do not have a substantial population of minorities and those in which either 25-50 percent or a majority of the population is minority. Examiners further found the bank's branching locations to be reasonable.

Examiners also reviewed the bank's lending policies and procedures, including the fair lending policy. Veritex Bank has instituted policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations. Veritex Bank has a formal fair lending compliance program, which includes a training program and a fair lending compliance webinar for all employees. Veritex Bank also has a centralized consumer complaints process for resolving any complaints. Veritex bank completes internal fair lending audits and contracts with an external firm to perform semi-annual audits.

HMDA Data. The Board analyzed Veritex Bank's HMDA data related to all HMDA-reportable loans from 2011, 2012, and 2013 for its assessment area to develop a view of the bank's overall lending patterns. In particular, as described further below, the Board reviewed the data developed by Reserve Bank examiners in their recent redlining review of the bank. Veritex Bank's assessment area, at the time of the 2013 CRA Evaluation, included portions of Dallas and Collin counties. The assessment area included substantially all of the census tracts in Collin County in which African Americans and/or Hispanic residents composed a majority of the population in those tracts. The assessment area also included nearly half of such tracts in Dallas County.¹⁷

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 to

¹⁷ Following the 2013 CRA Evaluation Veritex Bank expanded the Dallas County portion of its assessment area to include all of Dallas County.

provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although 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 a bank excludes or denies credit to any group on a prohibited basis.¹⁸ Fully evaluating a bank's compliance with fair lending laws and regulations requires 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.

In comparing the percentage of Veritex Bank's HMDA applications and originations in census tracts in which a majority of the population is African American and/or Hispanic to the aggregate of all lenders or the adjusted aggregate for 2011 and 2012, examiners did not find statistically significant disparities for the portion of the bank's assessment area located in Collin County in 2011 or 2012 or for the portion located in Dallas County in 2011. Examiners found some statistically significant disparities in the bank's percentage of applications from such tracts compared to the aggregate and the adjusted aggregate in 2012 in Dallas County. However, the bank's percentage of originations from census tracts in which a majority of the population is African American and/or Hispanic did not differ in a statistically significant way compared with the aggregate and adjusted aggregate in Dallas County in 2012.

C. Conclusion on Convenience and Needs Considerations

As noted, the Reserve Bank conducted a comprehensive fair lending and redlining review at Veritex Bank contemporaneously with the 2013 CRA Evaluation of Veritex Bank and, based on their entire review, did not find evidence of illegal credit discrimination. Moreover, the Oak Lawn branch would be located in an LMI area and an area where the majority of the residents are minority, which is expected to allow Veritex Bank to establish new deposit and lending relationships with, and better serve, customers in the area. Based on all the facts of record, and for the reasons described in this order, the Board concludes that the convenience and needs factor, including Veritex Bank's CRA record, 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. The Board's approval is specifically conditioned on Veritex Bank's compliance with all commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. 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.

¹⁸ 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.

By order of the Board of Governors, effective December 8, 2014.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board