



Legal Developments: Fourth Quarter, 2015

Orders Issued Under Bank Holding Company Act

Orders Issued Under Section 3 of the Bank Holding Company Act

Royal Bank of Canada
Montreal, Canada

Order Approving the Formation of a Bank Holding Company, the Acquisition of a Bank Holding Company, and Determination on a Financial Holding Company Election
FRB Order No. 2015-28 (October 7, 2015)

Royal Bank of Canada (“RBC”), Montreal, Canada, a foreign banking organization and bank holding company that has elected to be a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ and its subsidiary, RBC USA Holdco Corporation (“RBC USA Holdco,” and together with RBC, “Applicants”), New York, New York, have requested the Board’s approval under section 3 of the BHC Act² to acquire City National Corporation (“City National”) and thereby indirectly acquire its subsidiary bank, City National Bank, both of Los Angeles, California. As part of the proposal, RBC USA Holdco will become a bank holding company. RBC USA Holdco also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of the Board’s Regulation Y.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 16010 (March 26, 2015)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

RBC, with consolidated assets of approximately \$832 billion, is the second largest bank in Canada by asset size.⁵ RBC provides retail and commercial banking, wealth management, insurance, investment banking, and transaction-processing services on a global basis. Internationally, RBC operates on six continents. In the United States, RBC controls RBC Bank (Georgia), National Association (“RBC Bank Georgia”), Atlanta, Georgia. RBC Bank Georgia operates only in Georgia. RBC Bank Georgia is the eighth largest depository institution in Georgia, controlling deposits of approximately \$2.7 billion, which repre-

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

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

⁴ 12 CFR 262.3(b).

⁵ Asset data and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted. Asset and ranking data for RBC on a consolidated basis are as of July 31, 2015, and are based on the exchange rate as of that date.

sent 1.4 percent of the total deposits of insured depository institutions in that state.⁶ RBC operates branches in New York; a state-licensed agency in Texas; and representative offices in California, Delaware, Texas, and Washington. RBC is a qualifying foreign banking organization and, upon consummation of the proposal, would continue to meet the requirements for a qualifying foreign banking organization under the Board's Regulation K.⁷

City National, with consolidated assets of approximately \$33.8 billion, is the 52nd largest insured depository organization in the United States, controlling approximately \$28.5 billion in deposits. City National controls City National Bank, which operates in California, Georgia, Nevada, New York, and Tennessee. City National Bank is the 214th largest insured depository institution in Georgia, controlling deposits of approximately \$47 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, RBC's U.S. operations would have approximately \$172 billion in consolidated assets, which represent less than 1 percent of the total assets of insured depository institutions in the United States. RBC USA Holdco would control total deposits of approximately \$28.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Georgia, RBC would remain the eighth largest depository organization, controlling deposits of approximately \$2.8 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁸ Under this section, 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 if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁹ In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.¹⁰

For purposes of the BHC Act, the home state of RBC is North Carolina, and City National Bank's home state is California.¹¹ City National Bank also is located in Georgia,

⁶ State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

⁷ 12 CFR 211.23(a).

⁸ 12 U.S.C. § 1842(d)(1)(A).

⁹ 12 U.S.C. § 1842(d)(1)(B).

¹⁰ 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

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 on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the main office of the bank is located.

Nevada, New York, and Tennessee. RBC is well capitalized and well managed under applicable law, and RBC Bank Georgia has a satisfactory Community Reinvestment Act (“CRA”)¹² rating. There are no minimum age requirements under the laws of California, Georgia, Nevada, New York, or Tennessee that apply to RBC’s acquisition of City National and City National Bank.¹³

On consummation of the proposed transaction, Applicants would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control less than 30 percent of the total amount of deposits of insured depository institutions in Georgia, the only state in which RBC and City National Bank have overlapping banking operations. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant market. The BHC Act prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁴

RBC and City National have subsidiary depository institutions that compete directly in the Atlanta, Georgia, banking market (“Atlanta market”).¹⁵ The Board has considered the competitive effects of the proposal in this banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative share of total deposits in insured depository institutions in the market (“market deposits”) that RBC would control;¹⁶ the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁷ and other characteristics of the market.

¹² 12 U.S.C. § 2901 *et seq.*

¹³ See Cal. Fin. Code § 1685(a); Ga. Code Ann. § 7-1-622; Nev. Rev. Stat. § 666.405; N.Y. Banking Law § 142-a; Tenn. Code Ann. § 45-2-1403.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ The Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, and Walton counties; Hall County (excluding the town of Clermont); the towns of Auburn and Winder in Barrow County; and Luthersville in Meriwether County, all in Georgia.

¹⁶ Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., *Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. See, e.g., *First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁷ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. See Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Atlanta market. On consummation of the proposal, the Atlanta market would remain moderately concentrated, as measured by the HHI. The change in the HHI would be small, and numerous competitors would remain in the market.¹⁸

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 Atlanta market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. 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 has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), the agency with primary responsibility for the supervision and regulation of federally registered Canadian banking organizations, including RBC.

The capital levels of RBC exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.¹⁹ The proposed transaction is a merger that is structured as a cash and share exchange.²⁰ The asset quality, earnings, and liquidity of

¹⁸ RBC operates the seventh largest depository institution in the Atlanta market, controlling approximately \$2.7 billion in deposits, which represent 2.1 percent of market deposits. City National operates the 73rd largest depository institution in the same market, controlling deposits of approximately \$47 million, which represent less than 1 percent of market deposits. On consummation of the proposed transaction, RBC would remain the seventh largest depository organization in the market, controlling deposits of approximately \$2.7 billion, which represent 2.1 percent of market deposits. The HHI for the Atlanta market would increase by 1 point to 1562, and 79 competitors would remain in the market.

¹⁹ The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 to total assets of RBC, RBC USA Holdco, and RBC Bank Georgia.

²⁰ Applicants would effect the acquisition by merging City National with and into RBC USA Holdco (with RBC USA Holdco as the survivor). At the time of the merger, each share of City National common stock would be converted into a right to receive RBC common stock and cash, based on an exchange ratio. RBC has the financial resources to fund the cash portion of the exchange.

RBC and City National are consistent with approval, and RBC appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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 RBC's U.S. operations, City National, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by RBC, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by commenters. As noted, the Board also has consulted with OSFI.

RBC, City National, and their subsidiary depository institutions are each considered to be well managed. RBC's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of RBC have substantial knowledge of and experience in the banking and financial services sectors.²¹

The Board also has considered RBC's plans for implementing the proposal. RBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. RBC would implement its risk-management policies, procedures, and controls at the combined organization, which are considered acceptable from a supervisory perspective. In addition, RBC and City National's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and RBC plans to integrate City National's existing management and personnel in a manner that augments RBC's management.²²

Section 3 of the BHC Act also prohibits the Board from approving a proposal unless the applicant provides adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.²³ The Board has reviewed the restrictions on disclosure of information in the relevant jurisdictions in which RBC operates and has communicated with relevant government authorities concerning access to information. In addition, RBC has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on its operations and the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act of 1978,²⁴ and other applicable federal laws. RBC also has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable it or its affiliates to make such information available to the Board.

Based on all the facts of record, including RBC's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation,

²¹ A commenter alleged that RBC previously had unsuccessful operations in the United States. Notwithstanding any previous difficulties in these markets, RBC is considered well capitalized and well managed.

²² A commenter expressed concerns that RBC's management "may be too far away" to govern effectively in the Los Angeles, California, area. As mentioned above, RBC intends to integrate City National's existing management and personnel in a manner that augments RBC's management and capacity consistent with the combined organization's scope of activities. RBC has successfully managed its operations in the United States.

²³ 12 U.S.C. § 1842(c)(3)(A).

²⁴ 12 U.S.C. § 3101 *et seq.*

and comments received on the proposal,²⁵ the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board and the records of effectiveness of RBC and City National in combatting money-laundering activities, are consistent with approval.

Supervision of Regulation on a Consolidated Basis

As required by section 3 of the BHC Act, the Board considers whether RBC is subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in its home country.²⁶ The Board previously has determined that RBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the OSFI.²⁷ RBC remains supervised by the OSFI on substantially the same terms and conditions. Based on this finding and all the facts of record, the Board concludes that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.²⁸ In its evaluation of the effect of the proposal on the convenience and needs of the communities to be

²⁵ A commenter alleged that RBC and City National collaborated to extend credit to a customer during the pendency of these applications. The BHC Act prohibits an applicant from exercising, or attempting to exercise, a controlling influence over the management or policies of a bank or bank holding company, without prior approval of the Board. *CBG, Inc.*, 91 *Federal Reserve Bulletin* 421, 421–22(2005). RBC represents that after announcing RBC’s proposed acquisition of City National, RBC and City National established internal controls and processes designed to ensure compliance with the applicable limitations of the BHC Act and sent notifications and reminders of such controls to their respective employees. RBC also represents that it did not extend credit to the customer at issue in view of the BHC Act’s limitations.

Some commenters expressed concerns about the level of racial and ethnic diversity among City National Bank’s employees, officers, and directors and about City National Bank’s efforts to do business with minority-owned suppliers. These concerns are outside the scope of the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Bank of America Corporation*, 90 *Federal Reserve Bulletin* 217, 223 n.31 (2004); *see also Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973). Separately, the Board, together with the other federal financial supervisory agencies, monitors the efforts of regulated entities to promote diversity and inclusion. Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 *Federal Register* 33016 (June 10, 2015). This policy statement implements section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), Pub. L. No. 111-203, 124 Stat. 1376, 1541–44 (2010), codified at 12 U.S.C. § 5452.

²⁶ 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth for foreign banks and parent foreign banks in the Board’s Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide, consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

²⁷ *Royal Bank of Canada*, 87 *Federal Reserve Bulletin* 467 (2001); *Royal Bank of Canada*, 83 *Federal Reserve Bulletin* 442 (1997). In addition, in 2013 it was determined that RBC is subject to comprehensive supervision on a consolidated basis by OSFI. *RBC Investor Services Bank S.A.*, FRB Order No. 2013-15 (December 17, 2013).

²⁸ 12 U.S.C. § 1842(c)(2).

served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²⁹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.³⁰

In addition, the Board considers the banks' overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of RBC Bank Georgia and City National Bank, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, information provided by RBC, and the public comments received on the proposal.

In this case, the Board also considered the business models of the institutions involved and the organization's plans after consummation. In addition, although RBC currently provides limited retail banking services in the United States, it had a substantially larger retail banking presence in the United States prior to the sale of its wholly owned subsidiary, RBC Bank (USA), Raleigh, North Carolina, to The PNC Financial Group, Inc. ("PNC") in 2012.³¹ To better assess RBC's record of meeting the credit needs of the communities it serves, the Board considered the CRA record of RBC Bank (USA) during the time that the bank was a wholly owned subsidiary of RBC.

The Board placed additional emphasis on City National Bank's record in meeting the convenience and needs of the communities it serves, because City National Bank will remain a separate entity and continue its existing CRA program after consummation of the proposed transaction. Moreover, City National Bank's retail banking business is significantly larger than RBC's current U.S. retail banking business.

Public Comments Regarding the Proposal. In this case, the Board received comments from 32 commenters supporting the proposal. Commenters describe favorable experiences with the community development lending and investment programs of City National. These commenters commend City National Bank and its management for the bank's community outreach efforts and support for various community development programs and initiatives, including board service and contributions to charitable organizations, some of which are aimed at benefitting minority and LMI individuals. Commenters also praise City

²⁹ 12 U.S.C. § 2901(b).

³⁰ 12 U.S.C. § 2903.

³¹ RBC Bank (USA) had total assets of approximately \$27 billion as of June 30, 2011.

National Bank's pro bono legal service, support for programs for at-risk youth and neighborhood improvement, and affordable housing initiatives. Further, commenters praise City National Bank for adopting a five-year, \$11 billion community development plan, emphasizing increased marketing and community outreach, financial education, improved access to credit for small businesses, and increased charitable giving within City National's assessment areas. Commenters, some of which consulted with City National Bank in the development of the community development plan, argue that the bank would provide even greater benefit to the communities served by the combined organization as a result of the plan.

Several commenters oppose the proposal, request that the Board approve the proposal only subject to certain conditions, or express concerns about the proposal.³² Some commenters express concerns regarding the efforts of RBC and City National to serve minority communities. For example, a commenter alleges racial disparities in City National Bank's and RBC Bank Georgia's lending activities based on data reported for 2013 under the Home Mortgage Disclosure Act of 1975 ("HMDA").³³ In addition, commenters allege that City National Bank made a disproportionately small number of Small Business Administration loans to African American-owned businesses, and "redlines" African American-owned businesses.³⁴

Several commenters allege that City National Bank and RBC Bank Georgia predominately serve affluent customers and do not help meet the needs of LMI communities. One commenter alleges disparities by income in City National Bank's lending activities based on 2013 HMDA data.

Businesses of the Involved Institutions and Response to Comments. RBC provides retail and commercial banking, wealth management, insurance, investment banking, and transaction-processing services on a global basis. In the United States, many of RBC's activities are conducted through RBC Capital Markets, LLC, New York, New York, a registered broker-dealer providing capital markets, wealth management, insurance, and treasury services.³⁵ RBC's retail banking presence in the United States is limited to RBC Bank Georgia, which has one physical location and provides retail and business banking services primarily to Canadian cross-border customers in the United States and to RBC's U.S. wealth management customers through online and mobile channels. RBC Bank Georgia's ability to engage in retail banking and small business banking activities in the United States has been restricted by a noncompete agreement with PNC, entered into in connection with RBC's sale of RBC Bank (USA) to PNC, which the Board approved in 2011.³⁶ Pursuant to that noncompete agreement, RBC was generally prohibited from engaging in retail banking and small business banking activities in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia for the three years following consummation of the sale of RBC Bank (USA) to PNC.³⁷ Only existing RBC customers were permitted to open a new banking relationship with RBC Bank Georgia, impeding the bank's ability to originate

³² Initially, 15 commenters opposed the proposal. Many of these commenters subsequently withdrew or amended their comments to support the proposal.

³³ 12 U.S.C. § 2801 *et seq.*

³⁴ Some commenters questioned whether City National Bank and RBC Bank Georgia were in compliance with HMDA reporting requirements, based on the number of HMDA-reportable loans listed by City National Bank and RBC Bank Georgia as "race not available." OCC examiners tested the accuracy of HMDA data in connection with the CRA evaluations of both institutions. In both evaluations, the OCC concluded that the HMDA data reported by both institutions could be relied upon in the evaluation.

³⁵ As of June 30, 2015, RBC Capital Markets, LLC had total assets of \$81.4 billion.

³⁶ See *PNC Financial Services Group, Inc.* (order dated December 23, 2011), 98 *Federal Reserve Bulletin* 16 (2d Quar. 2012).

³⁷ RBC's sale of RBC Bank (USA) to PNC was consummated on March 2, 2012.

loans or provide deposit services to new customers. Under the noncompete agreement, RBC Bank Georgia also was precluded from opening additional branches beyond its one Atlanta location.

City National Bank's primary focus is business lending, consistent with the bank's goal of providing financial solutions to individuals with \$1 million or more in investable assets and to small- and medium-sized companies with annual revenues between \$1 million and \$250 million. City National Bank also provides private banking, wealth management, and advisory and brokerage services to its customers. In particular, City National Bank provides banking services to customers in the entertainment and real estate industries and to professional services firms and their executives. City National Bank does not actively market home mortgage loan products but rather makes home mortgage loans as an accommodation to existing commercial, entertainment, and trust customers.

RBC asserts that it and City National Bank are helping to meet the credit needs of LMI individuals and communities in other ways. In particular, RBC contends that City National Bank engages in substantial community development lending, services, and investments. RBC maintains that, as demonstrated in the overall CRA ratings, both institutions exhibit satisfactory performance under the CRA. Moreover, RBC contends that both institutions have made efforts to identify and respond to community needs since their most recent CRA performance evaluations. More specifically, RBC represents that it has engaged in continued community outreach efforts with several California community development organizations. Further, RBC represents that City National Bank, along with three Southern California utility companies, has developed plans to implement educational programs and small business lending programs, the latter of which are expected to provide small business loans to qualified utility company suppliers owned by women and minorities and by lesbian, gay, bisexual, and transgender persons. RBC also represents that it and City National have engaged organizations in California communities to determine the credit needs of those communities and how those needs can be met by the combined organization. As a result of this outreach, City National announced a five-year, \$11 billion community development plan, which is discussed in more detail below.

Records of Performance under the CRA. As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.³⁸

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁹ 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 by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to

³⁸ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

³⁹ 12 U.S.C. § 2906.

determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;⁴⁰ the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.⁴¹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution. In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of RBC Bank Georgia and of City National Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC and the CFPB, confidential supervisory information, information provided by RBC, and the public comments received on the proposal.

CRA Performance of RBC Bank Georgia. RBC Bank Georgia was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of July 8, 2013 ("RBC Bank Georgia Evaluation").⁴² The bank received "High Satisfactory" ratings for both the Lending Test and the Investment Test and a "Low Satisfactory" rating for the Service Test.⁴³ Examiners found that the bank's geographic distribution of loans reflected good penetration throughout its assessment area and that the bank's record of lending to borrowers of different incomes was good. As discussed above and as noted by examiners, RBC Bank Georgia was subject to a three-year noncompete agreement beginning in 2011 that impeded the bank's ability to originate loans or provide deposit services to new customers.

⁴⁰ Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

⁴¹ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

⁴² The RBC Bank Georgia Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2012, through June 30, 2013, except for community development loans, which had an evaluation period from January 1, 2012, through July 8, 2013. Conclusions regarding RBC Bank Georgia's HMDA lending were based on loans purchased by the bank. The evaluation period for the Investment Test and the Service Test was from January 1, 2012, through July 8, 2013.

⁴³ The RBC Bank Georgia Evaluation included a full-scope evaluation of the bank's sole assessment area, the Atlanta-Sandy Springs-Marietta, Georgia, Metropolitan Statistical Area ("Atlanta MSA").

Examiners found that RBC Bank Georgia's lending levels reflected good responsiveness to the credit needs of the Atlanta MSA. Examiners noted that the overall distribution of loans reflected good penetration among borrowers of different incomes and that the overall distribution of loans reflected good penetration throughout the Atlanta MSA. The geographic distribution of home mortgage loans was considered good. Examiners found that the bank's geographic distribution of home refinance loans was excellent. The bank's distribution of home refinance loans to borrowers of different incomes also was considered excellent and exceeded the percentage of LMI families in the bank's assessment area. The bank's geographic distribution of home purchase loans in the bank's assessment area reflected adequate penetration. Although examiners found the bank's lending to low-income borrowers to be poor, lending to moderate-income borrowers was excellent, and the distribution of home purchase loans to borrowers of different incomes was good compared to area demographics.

In evaluating the Investment Test, examiners found that RBC Bank Georgia demonstrated good responsiveness to community development needs within the Atlanta MSA. Examiners noted that the bank had a significant level of qualified investments. During the evaluation period, the bank made investments in affordable housing mortgage-backed securities and made financial contributions to organizations providing affordable housing or services to LMI individuals. Examiners also noted that the bank's prior period investments had a continuing impact on the community development needs in the bank's assessment area.

Examiners found that RBC Bank Georgia's performance on the Service Test was adequate in relationship to the bank's resources and community development opportunities. Bank personnel served as home-ownership counselors and as board members to community development organizations, and provided technical assistance to two affordable housing community development organizations.

As discussed above, the Board also considered the CRA performance of RBC Bank (USA), which was a wholly owned subsidiary of RBC until its sale to PNC in 2012. RBC Bank (USA) was a full-service retail bank and operated 434 branches through the southeastern United States.⁴⁴ RBC Bank (USA) was assigned an overall rating of "Satisfactory" at the last CRA performance evaluation by the Federal Reserve Bank of Richmond before the sale to PNC, as of June 21, 2010 ("RBC Bank USA Evaluation").⁴⁵ The bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.⁴⁶ Examiners noted the bank's rating on the Lending Test reflected the bank's overall lending activity, distribution of lending among borrowers and geographies of different income levels, as well as the amount and responsiveness of community development lending in the bank's assessment areas. Further, examiners noted that the lending activity was consid-

⁴⁴ At the time of its sale to PNC, RBC Bank (USA) operated in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia.

⁴⁵ The RBC Bank USA Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2008, through December 31, 2009, except for community development loans, which had an evaluation period from April 22, 2008, through December 31, 2009. The evaluation period for the Service Test was from April 22, 2008, through June 21, 2010. With respect to the Investment Test, all qualified investments that were outstanding as of June 21, 2010, were considered.

⁴⁶ The RBC Bank USA Evaluation included full-scope evaluations of the following assessment areas: the Charlotte–Gastonia–Rock Hill, North Carolina–South Carolina, MSA; the Raleigh–Durham–Cary, North Carolina, Combined Statistical Area ("CSA"); the Wilmington, North Carolina, MSA; the Greensboro–Winston Salem–High Point, North Carolina, CSA; the Carteret, North Carolina, assessment area; the Huntsville–Decatur, Alabama, CSA; the Birmingham–Hoover, Alabama, MSA; the Atlanta MSA; the Orlando–Deltona–Daytona Beach, Florida, CSA; the Miami–Fort Lauderdale–Pompano Beach, Florida, MSA; the Palm Bay–Melbourne–Titusville, Florida, MSA; the Charleston–North Charleston, South Carolina, MSA; the Myrtle Beach–Conway–North Myrtle Beach, South Carolina, MSA; the Columbia, South Carolina, MSA; and the Virginia Beach–Norfolk–Newport News, Virginia, MSA.

ered good relative to the bank's capacity to lend and the economic conditions within the bank's market. In evaluating the Investment Test, examiners found that the bank made investments in equity housing funds, Low Income Housing Tax Credits, and other qualified investments impacting multiple bank markets. In evaluating the Service Test, examiners found that the bank actively supported community development organizations that provided community development services throughout its various market areas and that these activities showed a relatively high level of community service, as well as support for affordable housing efforts within the markets served by the bank.

RBC Bank Georgia's Efforts Since the 2013 CRA Evaluation. RBC represents that, since the RBC Bank Georgia Evaluation, the bank has made community development loans and investments focused on supporting the construction or financing of affordable housing within its assessment area. RBC Bank Georgia has partnered with community groups that provide homeowner-related services in LMI communities in Atlanta and provided funding for the development and preservation of affordable housing in Atlanta. In addition, the bank has implemented an affordable housing program and participates in the Federal Home Loan Bank of Atlanta's down-payment assistance program. RBC Bank Georgia also has hosted or contributed to a number of financial seminars on home ownership in LMI areas within its assessment area, including seminars on financial literacy, home-ownership counseling, and first-time home buying. The bank also has made charitable donations to nonprofit community groups within the Atlanta area and has provided grants focusing on financial literacy and affordable housing.

CRA Performance of City National Bank. City National Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of December 31, 2012 ("City National Bank Evaluation").⁴⁷ City National Bank received overall ratings of "High Satisfactory" for both the Lending Test and the Service Test and an "Outstanding" rating for the Investment Test.⁴⁸ Examiners found that City National Bank made an excellent level of community development loans and investments, and that the bank provided an overall good level of community development services.

Examiners found that City National Bank exhibited an overall excellent level of community development lending that had a significantly positive impact on lending performance overall. Examiners also noted an overall excellent level of lending activity of home mortgage loans and small loans to businesses. Nevertheless, examiners found that the bank could improve its penetration among businesses of different revenue sizes and borrowers of different income levels, given the demographics of the bank's assessment areas.

In California, where many commenters focused and the state that accounts for approximately 90 percent of City National Bank's total deposits, examiners rated the bank's Lending Test performance "High Satisfactory," noting that the bank's lending activity in

⁴⁷ The City National Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2009, through December 31, 2012, except for community development loans, which had an evaluation period from July 8, 2009, through December 31, 2012. The evaluation period for the Investment Test and the Service Test was from July 8, 2009, through December 31, 2012.

⁴⁸ The City National Bank Evaluation included a full-scope review of the following assessment areas: the Los Angeles–Long Beach–Glendale, California, Metropolitan Division; the assessment area comprising San Francisco and San Mateo counties, both in California; the Santa Ana–Anaheim–Irvine, California, MSA; the New York County, New York, assessment area; the Las Vegas–Paradise, Nevada, MSA; the Carson City, Nevada, MSA; the Davidson County, Tennessee, assessment area; and the assessment area comprising DeKalb and Fulton counties, both in Georgia. A limited-scope review was conducted in the Oakland–Fremont–Hayward, California, MSA; the Oxnard–Thousand Oaks–Ventura, California, MSA; the Riverside–San Bernardino–Ontario, California, MSA; the San Diego–Carlsbad–San Marcos, California, MSA; the Santa Clara County, California, assessment area; the Washoe County, Nevada, assessment area; and the Douglas County, Nevada, assessment area.

the Los Angeles, Santa Ana, and San Francisco assessment areas was excellent. Examiners found that City National Bank's overall geographic distribution of loans, including home mortgage loans and small business loans, reflected good penetration throughout California. Examiners noted that the bank's penetration of loans among borrowers of different income levels and businesses of different sizes was poor; however, examiners also found that City National Bank made a relatively high level of small business loans and community development loans for a variety of purposes, including the construction and development of affordable housing units for LMI individuals and the promotion of economic development. Examiners noted that City National Bank exhibited an excellent level of community development lending in California.

Examiners found City National Bank to have an outstanding level of qualified community development investments and grants, reflecting excellent responsiveness to credit and community economic development needs. Examiners noted that the bank made, or continued to hold, investments and grants to community development organizations; investments in low-income housing projects; and investments in a business-expansion loan program that supports job creation for LMI individuals. Examiners also noted that the bank supported a nonprofit organization providing life-skill programs to at-risk youth and homeless populations.

Examiners found that the bank's overall delivery systems, alternate delivery systems, banking products and services, and business hours within its assessment areas were reasonably accessible to all portions of the bank's assessment areas, including LMI individuals and geographies. City National Bank participated in a number of community development services. Examiners noted that the bank provided direct lending products and participated with federal government agencies in various guarantee programs aimed at providing down-payment assistance to first-time homebuyers and at facilitating affordable housing construction, rehabilitation, and development. Examiners noted that City National Bank's directors, officers, and staff contributed time to qualified community development services during the review period, a majority of which were targeted toward LMI individuals or small businesses.

City National Bank's Efforts Since the 2012 CRA Evaluation. After the City National Bank Evaluation, RBC represents that City National Bank has taken steps to improve its identification of and responsiveness to community needs. City National Bank has engaged in various outreach efforts within the Los Angeles area, including marketing efforts, engagement with community groups, and efforts to offer educational programming to LMI communities. In particular, City National Bank has communicated with and received input from a number of community organizations to ascertain how the proposed combined organization might better meet community needs.

In addition, in 2007 City National Bank announced a 10-year, \$17.5 billion CRA commitment ("2007 CRA Commitment") focused on CRA-related activities, including small business loans, community development loans, CRA-qualified investments, mortgage loans to minority borrowers, and charitable contributions. RBC represents that in the eight years since adopting the 2007 CRA Commitment, City National Bank has met and continues to meet the activity goals set forth in that commitment. From the time City National Bank implemented the 2007 CRA Commitment in 2008 until year-end 2014, the bank represents that it invested approximately \$11.54 billion in CRA-related activities, which accounts for approximately 66 percent of the 10-year commitment.

CRA Efforts of the Combined Organization. City National Bank will remain a separate entity and, except as discussed below, will substantially continue its current CRA program following consummation of the proposed transaction. RBC represents that City National

Bank has adopted a new community development plan to help meet the credit needs of the communities it serves. Under the plan, City National Bank intends to achieve a minimum of \$11 billion in qualified lending, investment, and charitable contributions, including \$4.2 billion in small business loans, \$4.4 billion in qualified CRA community development loans, and \$1.6 billion in qualified CRA investments. The plan outlines specific activities in City National Bank's assessment areas on which the bank plans to focus, including increased marketing and community outreach, financial seminars, small business lending, and services and charitable contributions. For example, City National Bank plans to create, market, and administer an account designed to serve the needs of unbanked and underbanked individuals.⁴⁹ City National Bank intends to improve access to credit for small businesses by providing technical assistance and by designating a portion of total small business lending for LMI communities and minority-owned small businesses. City National Bank intends to purchase between \$50 million and \$100 million in LMI residential loans annually and plans to increase the amount of community development lending for affordable housing in LMI communities. RBC represents that the plan would substantially increase City National Bank's commitments in lending, investments, services, and charitable contributions relative to the 2007 CRA Commitment. A number of community groups, including some of the commenters who initially opposed the proposal, discussed the development of the plan with City National and, after the adoption of the plan, many commenters subsequently withdrew their comments.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. RBC represents that the proposal would provide customers of the combined organization access to additional or expanded services, including capital markets products and services and an expanded range of wealth management and advisory products and services not offered to current City National Bank customers. RBC asserts that the combined organization would be better able to serve its clients, particularly those in small- and middle-market segments. In addition, RBC states that the combined organization will be strengthened by the complementary aspects of the two entities' businesses, including customer focus, geographic coverage, business orientation, and compatibility of the companies' management and operating styles, as well as the combined experience and expertise of their respective management and employees, which will result in a stronger and more stable franchise.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by RBC, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

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

⁴⁹ The account will include savings and checking services and will be done in accordance with the Model Safe Accounts Template developed by the Federal Deposit Insurance Corporation. See Federal Deposit Insurance Corporation, FDIC Model Safe Accounts Pilot Final Report 10 (April 2012), available at <https://www.fdic.gov/consumers/template/SafeAccountsFinalReport.pdf>.

proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system.”⁵⁰

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.⁵¹ 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.⁵²

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system, including the public comments.⁵³ In the United States, RBC primarily engages in securities brokerage and investment management through various entities under RBC USA Holdco and, on a smaller scale, in retail and business banking through RBC Bank Georgia. City National primarily engages in commercial banking and wealth management. In each of its activities, RBC has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain. The combined organization would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would pose a significant risk to the financial system in the event of financial distress. In addition, the organization would not be a critical services provider or be so interconnected with other firms or the markets that it would pose significant risk to the financial system in the event of financial distress.

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 determines that considerations relating to financial stability are consistent with approval.

Financial Holding Company Election

As noted above, RBC USA Holdco has elected to become a financial holding company in connection with the proposal. RBC USA Holdco has certified that, upon consummation of the proposal, RBC USA Holdco and all depository institutions it controls would be well capitalized and well managed and has provided all the information required under the Board’s Regulation Y.⁵⁴ Based on all the facts of record, the Board determines that RBC USA Holdco’s election will become effective upon consummation of the proposal if, on

⁵⁰ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

⁵¹ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

⁵² For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

⁵³ One commenter alleged that RBC is “too big to fail,” and another commenter alleged that the proposal is the “priciest deal” since the 2008–09 financial crisis.

⁵⁴ See Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1); 12 CFR 225.82(f).

that date, RBC USA Holdco is well capitalized and well managed and all depository institutions it controls are well capitalized, well managed, and have CRA ratings of at least “Satisfactory.”

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the applications should be, and hereby are, approved.⁵⁵ In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board’s approval is specifically conditioned on compliance by Applicants 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 the Federal Reserve Bank of New York, acting under delegated authority.

By order of the Board of Governors, effective October 7, 2015.

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

Robert deV. Frierson
Secretary of the Board

⁵⁵ Several commenters requested that the Board hold public hearings or meetings on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on any application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 U.S.C. § 1842(b); 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 represent their views. The Board has considered the commenters’ requests in light of all the facts of record. In the Board’s view, commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters’ requests do not identify disputed issues of fact material to the Board’s decision and that would be clarified by a public meeting. In addition, the requests do not demonstrate why written comments do not present the commenters’ views adequately or why a hearing or meeting 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 or meeting is not required or warranted in this case. Accordingly, the requests for a public hearing or meeting on the proposal are denied.

In addition, commenters requested a further extension of the comment period for the proposal. The Board’s Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time. 12 CFR 262.25(b)(2). The commenters’ requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the requests for extension of the comment period are denied.

Baylake Corp.
Sturgeon Bay, Wisconsin

Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches
FRB Order No. 2015-33 (November 16, 2015)

Baylake Corp. (“Baylake”), Sturgeon Bay, Wisconsin, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with NEW Bancshares, Inc. (“New Bancshares”), and thereby indirectly acquire its subsidiary bank, Union State Bank, both of Kewaunee, Wisconsin.

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

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 35,358 (2015)).⁵ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act, the Bank Merger Act, and the FRA. As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General and a copy of the request has been provided to the Federal Deposit Insurance Corporation (“FDIC”).

Baylake, with consolidated assets of approximately \$981.1 million, is the 717th largest depository organization in the United States.⁶ Baylake controls Baylake Bank, which operates only in Wisconsin. Baylake is the 22nd largest insured depository organization in Wisconsin, controlling deposits of approximately \$737.9 million, which represent less than 1 percent of the total deposits in insured depository institutions in that state.⁷

NEW Bancshares, with consolidated assets of approximately \$86.7 million, is the 4,806th largest depository organization in the United States. NEW Bancshares controls Union State Bank, a nonmember bank that operates only in Wisconsin. NEW Bancshares is the 193rd largest insured depository organization in Wisconsin, controlling approximately \$79.0 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Wisconsin.

On consummation of this proposal, Baylake would become the 657th largest depository organization in the United States, with consolidated assets of approximately \$1.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ 12 U.S.C. § 1828(c).

⁴ 12 U.S.C. § 321. These locations are listed in Appendix A. Baylake will consolidate one branch of Union State Bank with a neighboring branch of Baylake Bank.

⁵ 12 CFR 262.3(b).

⁶ Nationwide deposit, asset, and ranking data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

⁷ State deposit, market share, and ranking data are as of June 30, 2014.

the United States. Baylake would control total deposits of approximately \$816.9 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Wisconsin, Baylake would become the 20th largest depository institution, controlling deposits of approximately \$816.9 million, 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

Baylake and NEW Bancshares have subsidiary depository institutions that compete directly in the Green Bay, Wisconsin, banking market (the “Green Bay banking market”).⁹ The Board received two comments objecting to the proposal on the grounds that consummation of the proposal would result in decreased competition in Kewaunee, Wisconsin. These commenters expressed concern that consummation of the proposal would have an adverse impact on fees and loan rates in Kewaunee, Wisconsin.

The relevant banking market must reflect commercial and banking realities and should consist of the local area where banks offer their services and where local customers can practicably find alternatives. The key question to be considered in making this selection is “where, within the area of competitive overlap, the effect of the merger on competition will be direct or immediate.”¹⁰ In determining the relevant geographic market, the Board reviews a number of factors that identify the geographic area in which competitive forces act to affect the pricing and availability of banking products and services. These include data on worker commuting patterns, as indicated by census data; population density; degree of economic integration; and other similar factors that indicate the geographic scope of competition.¹¹

In this case, the Board has considered that a significant number of Kewaunee County and City of Kewaunee residents commute to Brown County, the central county of the Green Bay Metropolitan Statistical Area (“Green Bay MSA”). While there are numerous banking options in Brown County, the Board also notes that residents of Kewaunee County have closer banking alternatives available in the towns of Casco, Luxemburg, and Algoma, for which the travel time from Kewaunee County is approximately 20 minutes. Based on the proximity and economic integration of Kewaunee County with these other areas, and all the facts of record, the Board concludes that the relevant banking market to consider in reviewing the competitive effects of this proposal is the Green Bay banking market.

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

⁹ The Green Bay banking market is defined as Brown and Kewaunee counties; Morgan, Abrams, Pensaukee, Chase, and Little Suamico townships in Oconto County; Angelica and Maple Grove townships in Shawano County; Oneida township in Outagamie County; and Cooperstown township in Manitowoc County, all in Wisconsin.

¹⁰ *St. Joseph Valley Bank*, 68 *Federal Reserve Bulletin* 673 (1982) (quoting *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963)).

¹¹ See *Crestar Bank*, 81 *Federal Reserve Bulletin* 200, 201 n.5 (1995); *Pennbancorp*, 69 *Federal Reserve Bulletin* 548 (1983); *St. Joseph Valley Bank*, 68 *Federal Reserve Bulletin* 673 (1982); and *U.S. Bancorp*, 67 *Federal Reserve Bulletin* 60, 61 n.2 (1981).

The Board has considered the competitive effects of the proposal in the Green Bay 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 total deposits in insured depository institutions in the market (“market deposits”) that Baylake would control;¹² the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹³ the comments received on the proposal; and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Green Bay banking market. On consummation of the proposal, the Green Bay banking market would remain moderately concentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.¹⁴

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 Green Bay banking market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Bank Merger Act, and the FRA, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations’ significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information

¹² Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989) and National City Corporation, 70 Federal Reserve Bulletin 743 (1984).* Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 53 (1991).*

¹³ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice (“DOJ”) has informed the Board that a bank merger or acquisition generally would not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. Although the DOJ and the Federal Trade Commission issued revised Horizontal Merger Guidelines in 2010, the DOJ has confirmed that its Bank Merger Guidelines, which were issued in 1995, were not modified. *See* Press Release, Department of Justice (August 19, 2010), www.justice.gov/opa/pr/2010/August/10-at-938.html.

¹⁴ Baylake operates the seventh largest depository institution in the Green Bay banking market, controlling approximately \$288.2 million in deposits, which represent 4.9 percent of market deposits. NEW Bancshares operates the 14th largest depository institution in the same market, controlling deposits of approximately \$75.1 million, which represent 1.3 percent of market deposits. Upon consummation of the proposed transaction, Baylake would become the fifth largest depository institution in the market, controlling deposits of approximately \$363.3 million, which represent 6.2 percent of market deposits. The HHI for the Green Bay banking market would increase by 12 points to a level of 1426, and 19 competitors would remain in the market.

regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. 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.

Baylake and Baylake Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.¹⁵ The asset quality, earnings, and liquidity of Baylake and NEW Bancshares are consistent with approval, and Baylake appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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 Baylake, NEW Bancshares, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Baylake; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; as well as information provided by commenters.

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

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

Based on all the facts of record, including Baylake's supervisory record, managerial and operational resources, plans for operating the combined institution after consummation, and comments received on the proposal, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Baylake and NEW Bancshares in combatting money-laundering activities, are consistent with approval.

¹⁵ To effect the holding company merger, each share of NEW Bancshares common stock would be converted into a right to receive Baylake common stock and cash, based on an exchange ratio. Baylake expects to fund the cash portion of the exchange with financing from a third-party lender. Baylake has the financial resources to support this obligation.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act and the Bank Merger Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.¹⁶ In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on 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 assess a depository institution’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods.¹⁹

In addition, the Board considers the banks’ overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the applicant institution’s business model, its marketing and outreach plans, the organization’s plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Baylake Bank and Union State Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Baylake, and the public comments received on the proposal.

Records of Performance under the CRA. As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution’s performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.²⁰

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²¹ 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 by the institution’s primary federal supervisor of the institution’s overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the

¹⁶ 12 U.S.C. § 1842(c)(2).

¹⁷ 12 U.S.C. § 2901 *et seq.*

¹⁸ 12 U.S.C. § 2901(b).

¹⁹ 12 U.S.C. § 2903.

²⁰ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642, 11,665 (March 11, 2010).

²¹ 12 U.S.C. § 2906.

credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act ("HMDA"), in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²² the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Baylake Bank. Baylake Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 26, 2013 ("Baylake Bank Evaluation").²³ The bank received "High Satisfactory" ratings for the Lending Test, the Investment Test, and the Service Test.²⁴

Examiners found that the bank originated a high percentage of loans within its assessment areas and that the geographic distribution of loans reflected good penetration throughout its assessment areas. Examiners noted that the bank's lending levels reflected a good responsiveness to the credit needs of its assessment areas. Examiners found that the bank's distribution of loans reflected a good penetration among borrowers of different income levels, as well as small businesses and small farms of different sizes. Finally, examiners noted that the bank made an adequate level of community development loans, and made extensive use of innovative and flexible lending practices to serve the credit needs of borrowers in its assessment areas.

Examiners found Baylake Bank to have a good level of qualified community development investments, particularly those that are not routinely provided by private investors. Examiners noted that the bank's investments were focused on affordable housing through the purchase of mortgage-backed securities, revitalization and stabilization through the purchase of bonds that fund improvements in targeted areas, and community service activities that support education. Examiners found that the bank exhibited good responsiveness to credit and community development needs.

²² Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.,* 12 CFR 228.22(b)(3).

²³ The Baylake Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The Baylake Bank Evaluation reviewed HMDA and CRA reportable lending from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was January 1, 2011, through August 26, 2013.

²⁴ The Baylake Bank Evaluation included a full-scope review of three assessment areas: the Green Bay MSA; the Door County Non-Metropolitan Area; and the Waupaca-Waushara-Green Lake County Non-Metropolitan Area. A limited-scope review was performed in the Appleton MSA and the Manitowic County Non-Metropolitan Area.

Examiners noted that Baylake Bank's delivery systems were reasonably accessible to the bank's geographies and individuals of different income levels in its assessment areas. Examiners found that the bank's business hours and banking services did not vary in a way that inconvenienced its assessment areas, particularly LMI geographies or LMI individuals, and that the bank's record of opening and closing branch offices had not adversely impacted LMI geographies or individuals. Finally, examiners noted that the bank provides a relatively high level of community development services.

CRA Performance of Union State Bank. Union State Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of March 23, 2015 (the "Union State Bank Evaluation"),²⁵ with a rating of "Satisfactory" for the Lending Test.²⁶

Examiners found that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and credit needs within the bank's assessment areas. Examiners noted that the bank originated a majority of home mortgage loans and small business loans within its assessment areas.²⁷ Examiners also noted that the bank's geographic distribution of home mortgage loans and small business loans reflected reasonable penetration among borrowers of different income levels and businesses of different sizes and that home mortgage loans and small business loans reflected a reasonable distribution throughout the bank's assessment areas.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Baylake represents that customers of the combined organization would benefit from increased lending capabilities upon consummation of the proposal and that the proposal would provide such customers with access to an expanded ATM network. In addition, Union State Bank's customers would benefit from expanded availability of products and services that are not currently offered by Union State Bank, including a wider array of deposit products, online banking, and mobile banking.

The Board received a comment from a member of the local school board in Kewaunee County, objecting to the proposal on the basis that it would have an adverse impact on the availability of low-cost products and services offered by the resulting institution to municipal organizations and that, as a result, the school board may be required to look outside of the Kewaunee County community for banking alternatives. Based on consultations with members of school boards in other school districts, this commenter asserts that other school districts do not have access to the same low-cost products and services currently offered by Union State Bank.

²⁵ The Union State Bank Evaluation was conducted using the Small Bank CRA Examination Procedures. The Lending Test included a review of HMDA reportable lending for 2013 and 2014 and a random selection of small business loans originated since January 1, 2014. The lending activities within each category were given equal weight in the Union State Bank Evaluation, as both categories represent the primary lending focus of the institution.

²⁶ The lending test applicable to small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; the percentage of loans and other lending-related activities located in the bank's assessment areas; the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. *See, e.g.*, 12 CFR 228.26(b).

²⁷ The Union State Bank Evaluation included a review of the bank's assessment areas consisting of Brown County, Kewaunee County, and Manitowoc County.

Baylake represents that it has no plans to eliminate any products or services in this banking market upon consummation of the proposal and that Baylake Bank would continue to offer the same products and services currently provided by Union State Bank, as well as additional products and services that Baylake Bank currently makes available to its customers. Moreover, as described above, 19 competitors would remain in the Green Bay banking market, the relevant banking market in which the commenter is located, ensuring that alternative banking options are available at competitive prices within the relevant banking market upon consummation of the proposal.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the FDIC, confidential supervisory information, information provided by Baylake, the public comments received on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the BHC Act and the Bank Merger Act to require the Board to consider the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks 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

In this case, 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, Baylake would have approximately \$1.1 billion in consolidated assets and would not be likely to pose systemic risks. The Board generally presumes that a proposal 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

²⁸ Dodd-Frank Act §604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601 (2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

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 2012-2 (February 14, 2012).

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.

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 determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Baylake Bank has applied under section 9 of the FRA to establish branches at the current locations of Union State Bank. The Board has assessed the factors it is required to consider when reviewing an application under that section.³¹ Specifically, the Board has considered Baylake Bank's financial condition, management, capital, actions in helping to meet the convenience and needs of the communities to be served, CRA performance, and investments 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 determines 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 Baylake and Baylake Bank 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 15th calendar day after the effective date of this Order or later than three months thereafter, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago acting under delegated authority.

By order of the Board of Governors, effective November 16, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

³¹ 12 U.S.C. § 322; 12 CFR 208.6.

BB&T Corporation Winston-Salem, North Carolina

*Order Approving the Merger of Bank Holding Companies
FRB Order No. 2015-35 (December 23, 2015)*

BB&T Corporation (“BB&T”), Winston-Salem, North Carolina, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ has requested the Board’s approval under section 3 of the BHC Act² to merge with National Penn Bancshares, Inc. (“National Penn”), and thereby indirectly acquire National Penn Bank, both of Allentown, Pennsylvania. Following the proposed acquisition, National Penn Bank would be merged into BB&T’s subsidiary bank, Branch Banking and Trust Company (“Branch Bank”), also of Winston-Salem.³

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 58731 (September 30, 2015)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

BB&T, with consolidated assets of approximately \$209.7 billion, is the 17th largest insured depository organization in the United States, controlling approximately \$146.8 billion in consolidated deposits, which represent approximately 1.1 percent of the total amount of deposits of insured depository institutions in the United States.⁵ BB&T controls Branch Bank, which operates in Alabama, Florida, Georgia, Indiana, Kentucky, Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. Branch Bank is the 10th largest depository institution in Pennsylvania, controlling deposits of approximately \$9.7 billion, which represent 2.7 percent of the total deposits of insured depository institutions in that state.⁶ Branch Bank is the fifth largest depository institution in Maryland, controlling deposits of approximately \$10.1 billion, which represent 7.7 percent of the total deposits of insured depository institutions in that state. Branch Bank is the 25th largest depository institution in New Jersey, controlling deposits of approximately \$1.7 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

National Penn, with consolidated assets of approximately \$9.6 billion, is the 120th largest insured depository organization in the United States, controlling approximately \$6.7 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. National Penn controls National Penn Bank, which operates in Maryland, New Jersey, and Pennsylvania. National Penn Bank is the 12th largest depository institution in Pennsylvania, controlling deposits of approximately \$6.7 billion, which represent 1.9 percent of the total deposits of insured depository institutions in that state. In addition, National Penn Bank is the 89th and 95th largest depository institution in New Jersey and in Maryland, respectively, controlling

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842.

³ The merger of National Penn Bank into Branch Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) pursuant to section 18(c) of the Federal Deposit Insurance Act.

⁴ 12 CFR 262.3(b).

⁵ National asset and deposit data are as of June 30, 2015, unless otherwise noted and reflect the acquisition of Susquehanna Bancshares, Inc.

⁶ State deposit data are as of June 30, 2015, unless otherwise noted and reflect the acquisition of Susquehanna Bancshares, Inc. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

deposits of approximately \$207.5 million and \$28.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in those states.

On consummation of this proposal, BB&T would remain the 17th largest insured depository organization in the United States, with consolidated assets of approximately \$219.3 billion, which represent 1.0 percent of the total amount of assets of insured depository institutions in the United States. BB&T would control consolidated deposits of approximately \$153.5 billion, which represent 1.2 percent of the total deposits of insured depository institutions in the United States. BB&T would become the fifth largest depository organization in Pennsylvania, controlling deposits of approximately \$16.4 billion, which represent 4.6 percent of the total amount of deposits of insured depository institutions in that state. BB&T would remain the fifth largest depository organization in Maryland, controlling deposits of approximately \$10.1 billion, which represent 7.7 percent of the total amount of deposits of insured depository institutions in that state. In addition, BB&T would become the 23rd largest depository organization in New Jersey, controlling deposits of approximately \$1.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁷ Under this section, 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 if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.⁸ In addition, the Board may not approve an interstate application if the bank holding company controls or would upon consummation of the proposed transaction control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.⁹

For purposes of the BHC Act, the home state of BB&T is North Carolina, and National Penn Bank's home state is Pennsylvania.¹⁰ National Penn Bank also operates in Maryland and New Jersey. BB&T is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA")¹¹ rating. Maryland, New Jersey, and Pennsylvania do not have minimum age requirements,¹² and National Penn Bank has been in existence for more than five years.

⁷ 12 U.S.C. § 1842(d)(1)(A).

⁸ 12 U.S.C. § 1842(d)(1)(B).

⁹ 12 U.S.C. § 1842(d)(2)(A) and (B). The acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. *See* 12 U.S.C. § 1841(o)(4)–(7).

¹⁰ *See* 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A state bank's home state is the state in which the bank is chartered.

¹¹ 12 U.S.C. § 2901 *et seq.*

¹² *See* Md. Code Ann., Fin. Inst. §§ 5-901 to 5-910; N.J. Stat. Ann. § 17:9A-133.1; 7 Pa. Stat. Ann. §§ 1601–1610.

On consummation of the proposed transaction, BB&T would control 1.2 percent of the total amount of consolidated deposits in insured depository institutions in the United States. Maryland and New Jersey impose a 30 percent limit on the total amount of in-state deposits that a single banking organization may control.¹³ The combined organization would control approximately 7.7 percent and less than 1 percent of the total amount of deposits of insured depository institutions in Maryland and New Jersey, respectively. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an 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 or tend to create a monopoly in any banking market, unless the Board finds that 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 communities to be served.¹⁴

BB&T and National Penn have subsidiary banks that compete directly in seven banking markets in Maryland, New Jersey, and Pennsylvania. The Board has considered the competitive effects of the proposal in the 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”) that BB&T would control;¹⁵ the concentration levels of market deposits and the increase in these levels as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁶ and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in all relevant banking markets. On consummation, the Lancaster, Pennsylvania, banking market would become highly concentrated; the Philadelphia, Pennsylvania, banking market would become moderately concentrated; and all other overlapping banking markets would remain moderately concentrated, as measured by the HHI. The change in the HHI in these markets generally would be small, consistent with Board precedent, and within the thresholds in the DOJ Bank Merger

¹³ Md. Code Ann., Fin. Inst. § 5-905(b); N.J. Stat. Ann. § 17:9A-133.1(b). Pennsylvania does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹⁴ 12 U.S.C. § 1842(c)(1).

¹⁵ Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386(1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743(1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50-percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

¹⁶ Under the DOJ Bank Merger Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the post-merger HHI is between 1,000 and 1,800, and highly concentrated if the post-merger HHI exceeds 1,800. 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 1,800 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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

Guidelines. In addition, numerous competitors would remain in all relevant banking markets.¹⁷

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

Based on all 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 seven banking markets in which BB&T and National Penn compete directly or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of the financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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 the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. 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.

BB&T and Branch Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.¹⁸ The asset quality, earnings, and liquidity of both BB&T and National Penn are consistent with approval, and BB&T appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. In addition, future prospects are considered consistent with approval.

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 BB&T, National Penn, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BB&T, the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations, and the orga-

¹⁷ These seven banking markets and the competitive effects of the proposal in these markets are described in the appendix.

¹⁸ As part of the proposed transaction, each share of National Penn common stock would be converted into a right to receive cash and BB&T common stock based on an exchange ratio. BB&T has the financial resources to fund the transaction.

nizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

BB&T, National Penn, and their subsidiary depository institutions are each considered to be well managed. BB&T's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of BB&T have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered BB&T's plans for implementing the proposal. BB&T has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. BB&T has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-integration process for this proposal. BB&T would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, BB&T's and National Penn's management have the experience and resources to ensure that the combined organization operates in a safe and sound manner, and BB&T plans to integrate National Penn's existing management and personnel in a manner that augments BB&T's management.¹⁹

Based on all the facts of record, including BB&T's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of BB&T and National Penn 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 considers the effects of the proposal on the convenience and needs of the communities to be served.²⁰ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions 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,²¹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.²²

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other charac-

¹⁹ BB&T represents that it will establish a new community banking region, which will have its headquarters in Allentown, Pennsylvania, and be led by a current National Penn executive. In addition, BB&T will invite the members of the boards of directors of National Penn and National Penn Bank to serve for three years as members of one or more regional advisory boards established by BB&T.

²⁰ 12 U.S.C. § 1842(c)(2).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

teristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board also may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Branch Bank and National Penn Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC, the Office of the Comptroller of the Currency ("OCC"), the Consumer Financial Protection Bureau ("CFPB"); confidential supervisory information; and information provided by BB&T.²³

Records of Performance under the CRA. As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board evaluates an institution's performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.²⁴

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²⁵ 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 by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA"),²⁶ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²⁷ the institution's

²³ The Board recently reviewed the CRA and fair lending records of Branch Bank in connection with its approvals of BB&T's acquisitions of The Bank of Kentucky Financial Corporation and Susquehanna Bancshares, Inc. See *BB&T Corporation*, FRB Order No. 201515 (June 3, 2015); *BB&T Corporation*, FRB Order No. 2015-18 (July 7, 2015).

²⁴ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

²⁵ 12 U.S.C. § 2906.

²⁶ 12 U.S.C. § 2801 *et seq.*

²⁷ Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

CRA Performance of Branch Bank. Branch Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of May 19, 2014 ("Branch Bank Evaluation").²⁸ Branch Bank received a "High Satisfactory" rating for the Lending Test and "Outstanding" ratings for the Investment Test and Service Test. Examiners found that Branch Bank made an excellent level of qualified investments and made extensive use of innovative investments to support community development initiatives. The Board has consulted with the FDIC regarding the Branch Bank Evaluation.

Examiners found that Branch Bank's overall lending levels reflected good responsiveness to assessment area credit needs and that Branch Bank made a high percentage of its loans within its assessment areas. According to examiners, the bank's geographic distribution of loans reflected adequate penetration throughout the bank's assessment areas. Examiners also found that the bank's distribution of borrowers reflected good penetration among retail customers of different income levels and business customers of different sizes. Examiners noted that Branch Bank 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. Examiners also noted that the bank was a leader in making community development loans during the review period. Branch Bank's community development loans were made for a variety of purposes, including financing affordable housing for LMI individuals, promoting economic development by partnering with community development organizations, and supporting various state-wide lending consortiums. In addition, examiners noted that Branch Bank offered affordable housing loans through several federal and state government programs.

Examiners found that Branch Bank had an excellent level of qualified community development loan investments and grants, and its volume of qualified investments was significant. The bank extended qualified investments, often in a leadership position and not routinely provided by private investors, at a high level throughout its assessment areas. Examiners noted that Branch Bank's investment test performance was "Outstanding" throughout a significant number of states and multistate MSAs, and its performance was rated "High Satisfactory" in several others.²⁹ Examiners also found the bank to be a leader in affordable

²⁸ The Branch Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) in 2011, 2012, and 2013. The evaluation period for community development lending, innovative and flexible practices, qualified investments, and community development services was January 1, 2011, through December 31, 2013. The branch office distribution evaluation was as of December 31, 2013. The Branch Bank Evaluation covered Branch Bank's 108 assessment areas located in 11 states and five multistate metropolitan statistical areas ("MSAs"): Alabama; Florida; Georgia; Kentucky; Maryland; North Carolina; South Carolina; Tennessee; Texas; Virginia; West Virginia; the Charlotte, North Carolina–South Carolina, MSA ("Charlotte MSA"); the Columbus, Georgia–Alabama, MSA ("Columbus MSA"); the Kingsport–Bristol–Bristol, Tennessee–Virginia, MSA ("Kingsport MSA"); the Louisville, Kentucky–Indiana, MSA ("Louisville MSA"); and the Washington, D.C.–Maryland–Virginia–West Virginia, MSA ("Washington D.C. MSA"). The Branch Bank Evaluation included a full-scope review of 48 of these assessment areas, including all five multistate MSAs, which captured approximately 70 percent or more of the total lending and deposit activity for each state.

²⁹ Examiners found that the bank's performance under the Investment Test was "Outstanding" in Alabama, Florida, Georgia, North Carolina, South Carolina, Texas, Virginia, and West Virginia, as well as in the Columbus and Kingsport MSAs. Examiners also noted Branch Bank's investment test performance was "High Satisfactory" in Kentucky, Maryland, and Tennessee, as well as in the Charlotte, Louisville, and Washington D.C. MSAs.

housing tax credit investments and that the bank provided innovative investments that exhibited excellent responsiveness to assessment area needs.

Examiners noted that Branch Bank's overall branch distribution in Florida, Georgia, North Carolina, Tennessee, and Virginia provided a good level of accessibility to LMI individuals and areas and that its branch distribution in West Virginia provided excellent accessibility to LMI areas.³⁰ Examiners further noted that in the substantial majority of the remaining assessment areas, the branch distribution, by geography, was at least adequate. Examiners also found that the bank offered several services designed to meet the convenience and needs of the assessment areas, particularly for LMI geographies and individuals. Examiners indicated that the bank was a leader in providing community development services throughout its assessment areas. Examiners noted that bank management and employees provided financial advice and assistance to many community development organizations.

BB&T's Efforts Since the 2014 CRA Evaluation. In the first quarter of 2015, the FDIC approved a proposal by Branch Bank to acquire 41 branches in Texas from Citibank, National Association. In connection with that proposal, the FDIC directed Branch Bank to develop a strategic plan. Branch Bank developed the plan in the context of available aggregate and peer data and demographics, safe and sound lending considerations, and the bank's evaluated performance in majority-minority census tracts, as well as its performance among individual racial and ethnic groups. Branch Bank submitted its strategic plan, which provided for a semi-annual review of Branch Bank's enterprise-wide branching strategy, lending distributions, and marketing efforts, to the FDIC. The FDIC deemed the plan acceptable on February 3, 2015.

In 2015, Branch Bank opened branches in certain moderate-income and majority African American census tracts and has made enhanced investments in mortgage and small business advertising in minority communities. The bank also is working to complete two additional branches in Baltimore and has identified locations for the establishment of new branches in LMI and minority areas in Miami, Florida, and in Austin, Dallas, and Houston, all in Texas. Branch Bank continued to work with agencies involved in homebuyer education and financial literacy and with organizations addressing affordable housing in its assessment areas. In addition, the bank has hosted or participated in several community outreach activities centered on first-time home buying, financial literacy, credit awareness and counseling, budget planning, and business development in minority and LMI communities. Branch Bank has increased its marketing efforts in African American and Hispanic census tracts in the Atlanta, Baltimore, Dallas, and Houston markets. Similarly, Branch Bank has taken steps to enhance its community outreach to minority-owned businesses within its Atlanta, Baltimore, Dallas, and Houston markets.

CRA Performance of National Penn Bank. National Penn Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the OCC, as of June 3, 2013 ("National Penn Bank Evaluation").³¹ National Penn Bank received "Outstanding" ratings for the Lending Test and Service Test and a "High Satisfactory"

³⁰ Examiners noted that Branch Bank demonstrated an "Outstanding" record regarding the Service Test in Florida, Georgia, North Carolina, Virginia, and West Virginia, and in several multistate MSAs. As of December 31, 2013, the bank operated 870 branches in Florida, North Carolina, and Virginia, which together accounted for approximately 48 percent of the bank's branches. Consequently, examiners placed more weight on the institution's performance in Florida, North Carolina, and Virginia.

³¹ The National Penn Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2010, to December 31, 2012, except for community development loans, which had an evaluation period from April 6, 2010, to June 3, 2013. The evaluation period

rating for the Investment Test.³² Examiners noted that National Penn Bank's lending levels reflected excellent responsiveness to community credit needs, and the distribution of loans to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes. Examiners also noted that National Penn Bank was a leader in providing community development services.

Examiners noted that National Penn Bank's overall lending levels reflected excellent responsiveness to assessment area credit needs in Pennsylvania and good responsiveness in the Philadelphia–Camden–Wilmington, Pennsylvania–New Jersey–Delaware–Maryland, MSA. Examiners found that a substantial majority of home mortgage loans and small business loans were originated within the bank's combined assessment areas. Examiners also found that the bank's geographic distribution of loans reflected good penetration throughout the bank's assessment areas and excellent penetration among retail customers of different income levels and businesses of different sizes in Pennsylvania. Examiners noted that the bank's community development lending had a positive impact on the Lending Test rating.

Examiners observed that the bank had a significant level of qualified community development investments, donations, and grants throughout its assessment areas. The bank's investments supported community development financial institutions and were also used to purchase Government National Mortgage Association issued mortgage-backed securities with the underlying collateral consisting of loans to LMI borrowers.

Examiners found that the bank was a leader in providing community development services. Examiners also found that the bank's delivery systems were readily accessible to individuals of different income levels in the assessment areas.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Branch Bank represents that it will apply the bank's CRA lending, investment, and service programs to the operations and activities of National Penn Bank in the communities it serves. BB&T represents that as a result of the proposal, existing customers of National Penn would have access to a complement of products and services that is more expansive than that currently available at National Penn, including Small Business Administration products, prepaid accounts with debit cards, overdraft lines of credit, credit cards, securities brokerage services, fee-based financial planning and investment management services, retirement and institutional services, and corporate trust services. Moreover, BB&T asserts that customers of both institutions would benefit from a more expansive branch and ATM network.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, consultations with the FDIC, OCC, and CFPB, confidential supervisory

for the Investment Test and the Service Test was from April 6, 2010, through June 3, 2013. Examiners also considered investments made by National Penn Investment Company, a wholly owned subsidiary of National Penn.

³² The National Penn Bank Evaluation included a full-scope review of the following assessment areas: the Philadelphia, Pennsylvania, Metropolitan Division ("MD"); the Allentown–Bethlehem–Easton, Pennsylvania–New Jersey, MSA; and the Reading, Pennsylvania, MSA. A limited-scope review was performed in the Wilmington, Delaware–Maryland–New Jersey, MD; the Lancaster, Pennsylvania, MSA; the Scranton–Wilkes-Barre, Pennsylvania, MSA; the State College, Pennsylvania, MSA; and the Schuylkill County and Monroe County assessment areas, both in Pennsylvania. The York–Hanover, Pennsylvania, MSA was only reviewed during the evaluation period using 2000 census data. National Penn Bank's sole office in this MSA was closed in 2012, eliminating it as an assessment area.

information, information provided by BB&T, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

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 risks to the stability of the United States banking or financial system.”³³

To assess the likely effect of a proposed transaction on the stability of the U.S. banking or financial system, the Board considers a variety of metrics that capture the systemic “footprint” of the resulting firm and the incremental effect of the transaction on the systemic footprint of the acquiring firm. These metrics include measures of the size of the resulting firm, the availability of substitute providers for any critical products and services offered by the resulting firm, the interconnectedness of the resulting firm with the banking or financial system, the extent to which the resulting firm contributes to the complexity of the financial system, and the extent of the cross-border activities of the resulting firm.³⁴ These categories are not exhaustive, and additional categories could inform the Board’s decision. In addition to these quantitative measures, the Board considers qualitative factors, such as the opaqueness and complexity of an institution’s internal organization, 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.³⁵

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. Both the acquirer and the target are predominately engaged in retail commercial banking activities.³⁶ The pro forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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 determines that considerations relating to financial stability are consistent with approval.

³³ Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

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

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

³⁶ BB&T primarily accepts retail deposits and engages in mortgage lending, loan servicing, small business lending, other consumer lending, wealth management, asset management, and capital markets services. To a much lesser extent, BB&T engages in insurance agency and wholesale insurance brokerage activities, and securities brokerage services. National Penn accepts retail deposits and engages in mortgage lending, other consumer lending, and business loans. To a much lesser extent, National Penn offers fiduciary, investment advisory, asset management, and retirement plan services, as well as securities and insurance brokerage, risk management, and real estate title and settlement services. In each of its activities, BB&T has, and as a result of the proposal would continue to have, a small share on a nationwide basis, and numerous competitors would remain.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by BB&T with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective December 23, 2015.

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

Robert deV. Frierson
Secretary of the Board

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

Community Bank System, Inc.
Dewitt, New York

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Bank
FRB Order No. 2015-34 (November 18, 2015)

Community Bank System, Inc. (“CBSI”), Dewitt, New York, a financial holding company within the meaning of the Bank Holding Company Act of 1956, as amended (“BHC Act”), has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act¹ to acquire Oneida Financial Corp. (“Oneida”) and thereby indirectly acquire its subsidiary bank, Oneida Savings Bank, a state savings bank that has elected to be treated as a savings association pursuant to section 10(l) of the Home Owners’ Loan Act, as amended,² both of Oneida, New York. CBSI has also requested the Board’s prior approval under section 3 of the BHC Act³ to acquire State Bank of Chittenango (“Bank of Chittenango”), Chittenango, New York, a limited purpose commercial bank wholly owned by Oneida Savings Bank.⁴ Following the proposed acquisition, Oneida Savings Bank and Bank of Chittenango would be merged into CBSI’s subsidiary bank, Community Bank, N.A., Canton, New York.⁵

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 27,171 (2015)).⁶ 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 the BHC Act.

CBSI, with consolidated assets of approximately \$7.9 billion, is the 142nd largest insured depository organization in the United States, controlling approximately \$6.1 billion in deposits.⁷ CBSI controls Community Bank, which operates in New York and Pennsylvania. Community Bank is the 26th largest depository institution in New York, controlling deposits of approximately \$4.9 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁸

Oneida, with consolidated assets of approximately \$850 million, is the 819th largest insured depository organization in the United States, controlling approximately \$744 million in deposits. Oneida controls Oneida Savings Bank, which operates solely in New York. Oneida Savings Bank is the 73rd largest insured depository institution in New York,

¹ 12 U.S.C. §§ 1843(c)(8) and (j).

² 12 U.S.C. § 1467a(l).

³ 12 U.S.C. § 1842(a).

⁴ Bank of Chittenango is a state-chartered nonmember commercial bank, the activities of which are limited to municipal deposit-taking. Oneida is not a bank holding company with respect to Bank of Chittenango. *See* 12 U.S.C. § 1841(a)(5)(E).

⁵ The mergers of Oneida Savings Bank and Bank of Chittenango into Community Bank are subject to the approval of the Office of the Comptroller of the Currency (“OCC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The OCC approved the bank mergers on November 12, 2015.

⁶ 12 CFR 262.3(b).

⁷ Nationwide asset and deposit data are as of June 30, 2015, unless otherwise noted.

⁸ State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

controlling deposits of approximately \$676 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁹

On consummation of this proposal, CBSI would become the 126th largest insured depository organization in the United States, with consolidated assets of approximately \$8.8 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. CBSI would control total deposits of approximately \$6.8 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, CBSI would become the 23rd largest depository organization, controlling deposits of approximately \$5.6 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

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.¹⁰ 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(c)(8) of the BHC Act.¹¹ CBSI has committed that all of the activities of Oneida and its subsidiaries will conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Factors Governing Board Review of the Transactions

Because this transaction involves the acquisition of a savings association and a bank, the Board has reviewed the transaction under both section 4 and section 3 of the BHC Act, respectively. Section 4 establishes the standards governing the acquisition of a savings association, and section 3 establishes the standards governing the acquisition of a bank.

Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Oneida “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 As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects 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.¹³ 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”).

⁹ The total amount of deposits held by Bank of Chittenango are included in the deposit data for Oneida Savings Bank.

¹⁰ 12 CFR 225.28(b)(4)(ii).

¹¹ 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, CBSI will immediately merge Oneida Savings Bank into Community Bank and will not operate the savings association independently.

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

¹³ 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); and *BancOne Corporation*, 83 *Federal Reserve Bulletin* 602 (1997).

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies involved in a transaction to acquire control of a bank. Section 3 also requires the Board to consider the competitive effects of the transaction, the effect of the proposal on the convenience and needs of the communities affected by the proposal, the risks of the proposal to the stability of the U.S. banking or financial system, and certain other factors.

Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of record.¹⁴ The Board also considers the competitive effects of a proposal when acting on an application under section 3 of the BHC Act.¹⁵ Under section 3 of the BHC Act, the Board is prohibited 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 banking market, and from approving a bank acquisition 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.¹⁶

CBSI and Oneida have subsidiary depository institutions that compete directly in the Utica-Rome, New York ("Utica-Rome market"), and Syracuse, New York ("Syracuse market"), banking markets.¹⁷ 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 share of total deposits in insured depository institutions in the markets ("market deposits") that CBSI would control,¹⁸ the concentration levels of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),¹⁹ 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 Utica-Rome and Syracuse banking markets. On consummation of the proposal, the Utica-Rome market and Syracuse market would remain moderately concentrated, as measured by the HHI. The changes in the

¹⁴ 12 U.S.C. § 1843(j)(2).

¹⁵ 12 U.S.C. § 1842(c).

¹⁶ 12 U.S.C. § 1842(c)(1).

¹⁷ The Utica-Rome market includes Herkimer and Oneida counties and portions of Madison county, all of New York. The Syracuse market includes Cayuga, Onondaga, and Oswego counties and portions of Cortland and Madison counties, all of New York.

¹⁸ Deposit and market share data are as of June 30, 2014, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989), and *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

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

HHI would be minimal, and numerous competitors would remain in the markets following consummation of the proposal.²⁰

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 Utica-Rome and Syracuse markets or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing proposals under sections 3 and 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.²¹ In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both a parent-only and a consolidated basis, as well as information about 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 public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. 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 the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. 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.

CBSI and Community Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.²² The asset quality, earnings, and liquidity of Community Bank, Oneida

²⁰ CBSI operates the ninth largest depository institution in the Utica-Rome market, controlling approximately \$102 million in deposits, which represent 2.5 percent of the market's total weighted deposits. Oneida operates the seventh largest depository institution in the same market, controlling weighted deposits of approximately \$250 million, which represent 6.1 percent of the market's total weighted deposits. On consummation of the proposed transaction, CBSI would become the third largest depository institution in the Utica-Rome market, controlling deposits of approximately \$603 million, which represent 13.9 percent of that market's deposits. The HHI for the Utica-Rome market would increase by 5 points to a level of 1340, and 10 other competitors would remain in the market. In the Syracuse market, CBSI operates the 11th largest depository institution, controlling approximately \$233 million in deposits, which represent 2.1 percent of the market's weighted deposits, and Oneida operates the 16th largest depository institution in the same market, controlling weighted deposits of approximately \$88 million, which represent less than 1 percent of the market's weighted deposits. On consummation of the proposed transaction, CBSI would become the ninth largest depository institution in the Syracuse market, controlling deposits of approximately \$409 million, which represent 3.6 percent of the market's total deposits. The HHI for the Syracuse market would decrease by 11 points to a level of 1212, and 25 other competitors would remain in the market.

²¹ 12 U.S.C. §§ 1842(c)(2) and 1843(j)(4); 12 CFR 225.13(b) and .26(b).

²² As part of the proposed transaction, each share of Oneida common stock would be converted into a right to receive cash or CBSI common stock based on a fixed exchange ratio, or a combination of the two. CBSI has the financial resources to fund the acquisition.

Savings Bank, and Bank of Chittenango are consistent with approval, and CBSI appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, the future prospects of the institutions under the proposal are considered consistent with approval.

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 CBSI, Oneida, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CBSI, the Board's supervisory experiences with CBSI and Oneida and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by the commenter.

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

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

Based on all of the facts of record, including CBSI's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of CBSI and Oneida 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 considers the effects of the proposal on the convenience and needs of the communities to be served.²⁴ The Board also considers this factor in weighing the possible adverse effects of the transaction against its public benefits, as required by section 4(j) of the BHC Act.²⁵ In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, and other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁶ The

²³ On consummation, two individuals currently serving as directors and officers of Oneida and Oneida Savings Bank will be added to the board of directors of CBSI and Community Bank.

²⁴ 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 1843(j)(2).

²⁶ 12 U.S.C. § 2901 *et seq.*

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,²⁷ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.²⁸

In addition, the Board considers the banks' overall compliance record and the results of recent fair lending examinations. Fair lending laws require all lending institutions to provide loan applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Community Bank and Oneida Savings Bank,²⁹ the fair lending and compliance records of both banks, the supervisory views of the OCC and the Federal Deposit Insurance Corporation ("FDIC"), confidential supervisory information, information provided by CBSI, and the public comments received on the proposal.

Public Comments Regarding the Proposal. In this case, the Board received comments from a commenter who objects to the proposal on the basis of alleged disparities in the number of conventional home purchase loans offered to African Americans or Hispanics, as compared to whites by Community Bank in the Buffalo/Niagara Falls ("Buffalo/Niagara") Metropolitan Statistical Area ("MSA"), the Rochester MSA, and the Syracuse MSA, all in New York, and by Oneida Savings Bank in the Syracuse MSA, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")³⁰ for 2013. In addition to the commenter's lending-related comments, the commenter alleges that CBSI is seeking to gerrymander its proposed post-merger CRA assessment areas.³¹ The OCC considered the same adverse comments in connection with its review of the underlying bank merger application.³²

Business of the Involved Institutions and Response to Comment. Community Bank is one of the largest community banking franchises headquartered in upstate New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans to consumers. Community Bank has a large residential mortgage loan operation; however, the bank's lending portfolio also consists of other types of loans, including small business loans, commercial and industrial loans, agricultural loans, and consumer loans. In addition to traditional deposit and loan products, Community Bank also offers insurance

²⁷ 12 U.S.C. § 2901(b).

²⁸ 12 U.S.C. § 2903.

²⁹ Bank of Chittenango is currently not subject to the CRA, as the bank is a limited purpose commercial bank that is restricted to accepting municipal deposits.

³⁰ 12 U.S.C. § 2801 *et seq.*

³¹ The commenter's allegation was prompted by CBSI's resubmission of its post-merger assessment areas to correct its inadvertent inclusion of certain entire counties in its post-merger assessment area map originally submitted in connection with its holding company application.

³² The OCC considered the CRA performance evaluation of each bank involved in the transaction, and on a prospective basis, the probable effect of the proposed bank merger on the convenience and needs of the communities to be served.

and investment products, and trust services. Community Bank's branches are generally located in smaller towns and cities within its geographic market areas.

CBSI argues that its lending record to minorities in the Buffalo/Niagara, Rochester, and Syracuse MSAs, as reflected in the 2013 HMDA data, is attributable to the low population of minorities in the communities in which its branches are located and is consistent with the fairly low level of minority mortgage loan applications that are processed by all HMDA reporting institutions in such MSAs generally. CBSI asserts that all mortgage applications received by Community Bank are reviewed in accordance with the bank's policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending. CBSI further asserts that its lending practices are based on criteria that ensure both safe and sound lending and equal access to credit by creditworthy applicants, and that the bank has comprehensive procedures and policies in place to accomplish these goals, which include a "second review" process for any loan denial of a minority applicant; ongoing fair lending training for the bank's lending personnel; an annual fair lending risk assessment; and quarterly reports from the bank's chief compliance officer, director of internal audit, and chief risk officer to the board of directors of the bank regarding consumer protection, fair lending, CRA, and other laws and regulations.

Oneida Savings Bank maintains 12 full-service offices in rural areas of New York. Oneida Savings Bank offers products and services for business and retail consumers and has a significant lending focus in serving the home mortgage credit needs of its assessment areas. CBSI states that Oneida Savings Bank did not receive any conventional home purchase applications from African American or Hispanic applicants in 2013 in the Syracuse MSA, and argues that the bank's lack of HMDA-reportable conventional home purchase applications in 2013 was largely attributed to the under-representation of African Americans and Hispanics in the communities in which Oneida Savings Bank's branches are located. CBSI asserts that Oneida Savings Bank maintains comprehensive fair lending policies and procedures that are designed to ensure equal access to credit for all qualified applicants, a second review process of loan denials, annual fair lending training for all employees and directors, and an annual fair lending audit conducted by Oneida's internal audit department.

Records of Performance under the CRA. As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters and the response to comments by the applicant. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information, as well as information and views provided by the appropriate federal supervisors.³³

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.³⁴ 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 by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institu-

³³ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11,642, 11,665 (March 11, 2010).

³⁴ 12 U.S.C. § 2906.

tion's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;³⁵ the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.³⁶ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Community Bank. Community Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of March 12, 2012 ("Community Bank Evaluation").³⁷ Community Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.³⁸ Examiners found that Community Bank provided a good level of community development services.

Examiners found that Community Bank's lending levels reflected excellent responsiveness to credit needs and an excellent ratio of loans within its assessment areas. Examiners also found that the bank had a good distribution of lending among census tracts and borrowers of different income levels and businesses of different sizes. The examiners highlighted that

³⁵ Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

³⁶ Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

³⁷ The Community Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2008, through December 31, 2011. The evaluation period for community development loans, investments, and services was from December 12, 2008, through March 11, 2012. As of the evaluation date, 13 of the bank's 15 assessment areas were located within the state of New York. Consequently, the greatest weight was given to New York State in the determination of the bank's overall CRA rating.

³⁸ Examiners conducted full-scope reviews of the Northern Region Non-MSA and Southern Region Non-MSA assessment areas of the bank, since those areas combined represented 79 percent of the bank's total lending, 65 percent of the bank's total number of branches, and 64 percent of the bank's total deposits in the state of New York. The examiners performed limited-scope reviews of the bank's performance in the MSA portions of the bank's assessment areas, including the Buffalo/Niagara, Rochester, and Syracuse MSAs, and found that the bank's overall performance under the Lending Test, Investment Test, and Service Test in such areas was not inconsistent with its performance in the assessment areas that received full-scope reviews.

Community Bank's innovative and flexible lending activity had a positive impact on the evaluation of its lending performance in New York.

Examiners found Community Bank to have investments that reflected good responsiveness to the credit and community development needs of the bank's assessment areas. Examiners noted that the bank's investments in its assessment areas included investments in mortgaged-backed securities comprised of mortgage loans made to LMI individuals or to finance residences located in LMI neighborhoods, and investments in municipal bonds that supported the revitalization and stabilization of LMI tracts or middle income census tracts designated as distressed or underserved.

Examiners found that the bank's delivery systems were accessible to census tracts and individuals of different income levels throughout its assessment areas. Examiners also found that Community Bank's hours and services offered throughout its assessment areas were good, and services offered were comparable among its branch locations regardless of the income level of the census tract. Examiners further noted that the bank's performance in providing community development services was good. Examiners highlighted Community Bank's low-cost and free banking service products, including its free checking, savings, and online banking products.

Community Bank's Activities since the Community Bank Evaluation. CBSI contends that, since the Community Bank Evaluation, it has significantly increased its community development lending and investments, and has continually engaged in community development and outreach efforts in its assessment areas. CBSI asserts that, between the years 2013 and 2014, Community Bank's employees donated their time and expertise on behalf of Community Bank to organizations, within the Syracuse, Rochester, and Buffalo/Niagara assessment areas, that have community development as their primary mission, including affordable housing agencies and organizations focused on business development, women and children advocacy, and other charitable causes. Community Bank represents that following consummation of the proposed transaction, it intends to implement additional measures to maintain and expand its outreach activities, staff, and other resources to continue to service minority individuals in its expanded assessment areas.

CRA Performance of Oneida Savings Bank. Oneida Savings Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of June 30, 2014 ("Oneida Savings Bank Evaluation").³⁹ The bank received "Satisfactory" ratings for the Lending Test⁴⁰ and Community Development Test.

³⁹ The Oneida Savings Bank Evaluation was conducted using the Intermediate Small Bank Evaluation Procedures, which include the Lending and Community Development Tests. The Lending Test evaluated the bank's loan originations for loans reportable under HMDA for 2012 and 2013. The Community Development Test evaluated community development loans, qualified investments, and community development services for the period of February 14, 2011, through June 30, 2014. Commercial, consumer, and farm loans, however, were not considered, as they did not represent a substantial portion of the bank's loan portfolio. The Oneida Savings Bank Evaluation included a full-scope review of Oneida Savings Bank's two assessment areas located within the Syracuse and Utica-Rome MSAs. The bank's performance in its assessment area located within the Syracuse MSA received more weight in the overall performance conclusions and ratings since a majority of the bank's offices and lending occurs in that area.

⁴⁰ The Lending Test applicable to intermediate small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments; the percentage of loans and other lending-related activities located in the bank's assessment areas; the bank's record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet the credit needs in its assessment areas. See, e.g., 12 CFR 228.26(b).

In evaluating the Lending Test, examiners found Oneida Savings Bank's net loan-to-deposit ratio to be reasonable. Focusing on the Syracuse MSA, examiners noted that a substantial majority of the bank's loans were made within its assessment areas, and the geographic distribution of loans reflected a reasonable dispersion throughout the assessment areas. Examiners also found that the bank's distribution of borrowers reflected reasonable penetration among individuals of different income levels given the demographics of the bank's assessment areas. The examiners also noted that Oneida Savings Bank's assessment areas had been defined in accordance with the requirements of the CRA regulation and did not arbitrarily exclude low- and moderate-income geographies.

In evaluating the Community Development Test, examiners found that Oneida Savings Bank was adequately responsive through community development loans, qualified investments, and community development services. Examiners noted that the bank offered three low-cost deposit accounts that would particularly benefit low- and moderate-income individuals throughout its assessment areas. The OCC found that Community Bank's and Oneida Savings Bank's records of helping to meet the credit needs of their communities and the probable effects on the convenience and needs of those communities were consistent with approval of the bank merger application, subject to certain conditions related to Community Bank's delineation of its post-merger assessment areas.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. CBSI represents that the proposal would provide customers of the combined organization access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas.⁴¹ Upon consummation of the bank mergers, Community Bank would offer the former depositors of Oneida Savings Bank its products and services, which Community Bank has represented are in many cases broader than the products and services offered by Oneida Savings Bank and Bank of Chittenango. CBSI expects that the merger would also enable it to compete more effectively with national financial institutions in its market areas and improve its ability to meet the needs of its customers and the communities in its market areas. Community Bank also represents that no significant reductions in products or services would be expected as a result of the proposal.

As noted, the commenter alleged the existence of HMDA data disparities in Community Bank's conventional home purchase lending to whites compared to its lending to African Americans and Hispanics in the Syracuse, Rochester, and Buffalo/Niagara markets and in Oneida Savings Bank's conventional home purchase lending in the Syracuse market. As discussed above, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution. The OCC conducted reviews of Community Bank's and Oneida Savings Bank's 2013 HMDA data and conducted supervisory activities to assess fair lending risk at Community Bank. In that connection, the OCC evaluated supervisory information as well as other information provided by Community Bank. The Board has conferred with the OCC regarding its review and has taken into consideration supervisory reviews and other relevant information.

The commenter also disputed the appropriateness of Community Bank's pro forma assessment areas. The OCC conducted a review of Community Bank's current and proposed assessment areas. Community Bank committed, in an October 29, 2015 letter to the OCC, to expand its post-merger CRA assessment areas in recognition of the bank's continued

⁴¹ Bank of Chittenango would be merged out of existence under the proposal, and its sole office located in Chittenango, New York, would be closed upon consummation of the merger. CBSI has represented that Community Bank would offer municipal deposit-taking services at all of its branches, including the former branches of the Oneida Savings Bank acquired by Community Bank under the proposal.

growth.⁴² The OCC indicated that the commitment addressed concerns with respect to the areas directly impacted by the proposed transaction.

In addition, as a condition of approval of the bank merger application, the OCC is requiring that Community Bank create a CRA Assessment Area Delineation Policy (“Policy”)⁴³ and modify, as appropriate, its assessment areas in accordance with the Policy. Community Bank must submit the Policy and any proposed modifications to the Policy or its assessment areas to the OCC for approval.

The Board expects CBSI to ensure that Community Bank complies with the conditions and commitments imposed by the OCC. More generally, the Board expects CBSI to implement policies and procedures that are commensurate with an institution of its size and complexity, including policies and procedures to ensure full compliance with CRA requirements.

Conclusion on Convenience and Needs. The Board has considered all of the facts of record, including the records under the CRA of the relevant depository institutions involved, the institutions’ records of compliance with fair lending and other consumer protection laws, consultations with the OCC and the FDIC, confidential supervisory information, information provided by CBSI, the public comments on the proposal,⁴⁴ and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended sections 3 and 4 of the BHC Act to require the Board to consider the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system.⁴⁵

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

⁴² In the letter (“Commitment Letter”), dated October 29, 2015, from Community Bank, N.A., to Marva V. Cummings, OCC Director of District Licensing, Community Bank committed to delineating its post-consummation assessment areas to include the following areas: (i) all of Oswego County, New York, including the areas north of the Oswego River and the north shore of Oneida Lake; (ii) all of Oneida County, New York, including the City of Utica; (iii) three census tracts previously excluded that form a triangle between the bank’s Boiceville (Ulster County) and Fleischmanns (Delaware County) branches, both of New York; (iv) the City of Binghamton, New York, and the census tracts south of the Susquehanna River and north of the state border; (v) all of Tioga County, New York; (vi) all of Chemung County, New York; (vii) the City of Ithaca and all of Tompkins County, both of New York; and (viii) the census tracts in Carbon County and Schuylkill County, between the Lansford (Carbon County) and Lehighton (Carbon County) branches and its Hazelton (Luzerne County) branch, all of Pennsylvania.

⁴³ 12 CFR 25.41.

⁴⁴ The commenter also expressed concern about possible job losses resulting from the proposal. CBSI has described certain steps it would take to minimize such job losses, including offering comparable positions in the post-merger organization and providing displaced employees with severance and health care benefits, as well as re-employment services and other assistance through the New York State Department of Labor. This concern, however, is outside of the limited statutory factors that the Board is authorized to consider when reviewing an application or notice under the BHC Act. See, *Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973); see also, e.g., *Wells Fargo & Company*, 82 *Federal Reserve Bulletin* 445, 457 (1996).

⁴⁵ Sections 604(d) and (e) of the Dodd-Frank Act, codified at 12 U.S.C. § 1842(c)(7) with respect to the acquisition of bank shares or assets and at 12 U.S.C. § 1843(j)(2)(A) with respect to the acquisition of savings associations.

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.⁴⁶ 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 opacity 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.⁴⁷

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, CBSI would have approximately \$8.8 billion in consolidated assets and, by any of a number of alternative measures of firm size, CBSI would not be likely to pose systemic risks. The Board generally presumes that a proposal that involves an acquisition of less than \$2 billion in assets, or that 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.

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 determines that considerations relating to financial stability are consistent with approval.

Weighing of Public Benefits of the Proposal

As noted above, in connection with a proposal under section 4 of the BHC Act, section 4(j) of the BHC 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.”⁴⁸ As discussed above, the Board has considered that the proposed transactions would provide greater services, product offerings, and geographic scope to customers of Oneida Savings Bank. In addition, the acquisitions would ensure continuity and strength of service to customers of Oneida Savings Bank.

The Board concludes 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 interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, 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 to the public, financial stability, and other factors weighs in favor of approval of this proposal.

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

⁴⁷ For further discussion of the financial stability standard, see *Capital One Order*.

⁴⁸ 12 U.S.C. § 1843(j)(2).

Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.⁴⁹

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application and notice should be, and hereby are, approved.⁵⁰ 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 Board's approval is specifically conditioned on compliance by CBSI 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 proposal. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective November 18, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

⁴⁹ 12 U.S.C. § 1843(j)(2)(A).

⁵⁰ The commenter requested that the Board hold a public hearing on the proposal. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 12 CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. 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 represent their views. The Board has considered the 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 comments do not present the commenter's views adequately or why a hearing would otherwise be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public hearing is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.

Order Issued Under Bank Merger Act

Farmers Bank of Northern Missouri Unionville, Missouri

*Order Approving the Merger of Banks and the Establishment of Branches
FRB Order No. 2015–32 (November 13, 2015)*

Farmers Bank of Northern Missouri (“Farmers Bank”), Unionville, 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 merge with Flowers National Bank (“Flowers Bank”), Cainsville, Missouri, a national bank.³ In addition, Farmers Bank has applied under section 9 of the Federal Reserve Act (“FRA”)⁴ to establish and operate branches at the main office and branches of Flowers Bank.⁵

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.⁶ 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.

Farmers Bank’s top-tier holding company, NMB, with total consolidated assets of \$346.4 million, operates in Missouri and Iowa. NMB is the 58th largest depository organization in Missouri, controlling deposits of approximately \$365.8 million, which represent less than 1 percent of the total amount of deposits in insured depository institutions in Missouri (“state deposits”).⁷

Flowers Bank, with total assets of approximately \$42.4 million, operates only in Missouri. Flowers Bank is the 275th largest insured depository institution in Missouri, controlling deposits of approximately \$35.9 million, which represent less than 1 percent of the total amount of state deposits.

On consummation of the proposal, NMB would become the 54th largest depository organization in Missouri, controlling deposits of approximately \$401.7 million, which represent less than 1 percent of the total amount of state deposits.

¹ Farmers Bank is a wholly owned subsidiary of Harrison County Bancshares, Inc. (“HCB”), Unionville, Missouri, a bank holding company. HCB is a wholly owned subsidiary of Northern Missouri Bancshares, Inc. (“NMB”), Unionville, Missouri, a financial holding company with total consolidated assets of approximately \$346.4 million (as of June 30, 2015). NMB also owns 54 percent of Exchange Bancorp of Missouri, Inc., parent of Exchange Bank of Missouri, both of Fayette, Missouri, and 80 percent of Concordia Banc-Management, Inc., parent of Concordia Bank, both of Concordia, Missouri.

² 12 U.S.C. § 1828(c).

³ Flowers Bank is wholly owned by J. Christopher Flowers in his individual capacity.

⁴ 12 U.S.C. § 321.

⁵ Flowers Bank’s branches are located at 1415 Washington Street in Cainsville and 3601 Miller Street in Bethany, both in Missouri.

⁶ 12 CFR 262.3(b).

⁷ Data are as of June 30, 2014. In this context, insured depository institutions include insured commercial banks, savings banks, and savings associations.

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.⁸ 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.⁹

Farmers Bank and Flowers Bank compete directly in the Harrison County, Missouri, banking market (the “Harrison County market”).¹⁰ 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 Farmers Bank would control,¹¹ the concentration level of market deposits and the increase in that level as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”),¹² and other characteristics of the market.

Using the initial competitive screening data, in the Harrison County market, Farmers Bank is the third largest insured depository institution, controlling deposits of approximately \$60.9 million, which represent approximately 14.0 percent of market deposits. Flowers Bank is the fourth largest insured depository institution in the market, controlling deposits of approximately \$35.9 million, which represent approximately 8.3 percent of market deposits. On consummation of the proposal, Farmers Bank would become the second largest insured depository institution in the Harrison County market, controlling deposits of approximately \$96.8 million, which would represent approximately 22.3 percent of market deposits. The HHI in the market would increase by 232 points, from 2582 to 2814.¹³

Although consummation of this proposal would eliminate some existing competition, certain factors indicate that the competitive effects of the proposal would not likely be significantly adverse. After consummation of the proposal, seven depository institutions would remain in the Harrison County market, including Bethany Bankshares, a depository

⁸ 12 U.S.C. § 1828(c)(5)(A).

⁹ 12 U.S.C. § 1828(c)(5)(B).

¹⁰ The Harrison County market is defined as Harrison and Mercer counties, the eastern half of Gentry County, including Albany, and the northwestern portion of Daviess County, including Coffey and Pattonsburg, all of Missouri.

¹¹ Deposit and market share data are as of June 30, 2014, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation’s Summary of Deposits data.

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

¹³ Analysis of the Harrison County market using data on small business lending results in an HHI similar to that derived using deposit data. Depending on the assumptions made in the analysis, the structural effect of the transaction on small business lending would either marginally exceed the Board’s delegation criteria or meet those delegation criteria by a small margin.

institution that would control 43 percent of deposits.¹⁴ One other depository institution would control at least 20 percent of market deposits. The proposed transaction would reduce the dominance of Bethany Bankshares by creating a competitor that, while still sizably smaller than the largest competitor in the market, is better situated to compete in the market and is only marginally larger than the firm that is currently the second largest in the market.

The DOJ has also analyzed the effect of the transaction on competition in the relevant markets and 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 is unlikely to have a significantly adverse effect on competition or on the concentration of resources in the Harrison County market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the Bank Merger Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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 acquiring organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently considers capital adequacy to be especially important. 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.

Farmers Bank is well capitalized and would remain so on consummation of the proposal. The proposal is structured as a merger of two depository institutions with each share of Flowers Bank to be canceled in exchange for cash consideration to be funded entirely by excess undivided profits held in the capital of Farmers Bank. The asset quality, earnings, and liquidity of Farmers Bank and Flowers Bank are consistent with approval, and Farmers Bank appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the target branches into Farmers Bank's operations. In addition, future prospects are considered consistent with approval.

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 Farmers Bank and Flowers Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory

¹⁴ Bethany Bankshares' large market presence is the primary cause of the market's high HHI, contributing over 1850 points to the current HHI of 2582. Bethany Bankshares also dominates the market's small business lending.

experiences and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws. The Board also has considered Farmers Bank's plans for implementing the proposal.

Farmers Bank and Flowers Bank are each considered to be well managed. The directors and senior management of Farmers Bank have significant banking experience and are considered to be satisfactory. In addition, Farmers Bank would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered to be acceptable from a supervisory perspective.

Based on all the facts of record, including Farmers Bank's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Farmers Bank and Flowers 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 considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act ("CRA").¹⁵ 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 assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.

In addition, the Board considers the banks' overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments by other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the applicant institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Farmers Bank and Flowers Bank, the fair lending and compliance records of both banks, the supervisory views of the Office of the Comptroller of the Currency ("OCC"), confidential supervisory information, and information provided by Farmers Bank.

¹⁵ 12 U.S.C. § 2901 *et seq.*

Record of Performance under the CRA. The Board evaluates an institution's performance based on the CRA evaluation completed by that institution's primary regulator.¹⁶ 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.¹⁷ 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 lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of a small insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's lending-related activities to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's available data reported under the Home Mortgage Disclosure Act, automated loan reports, and other reports generated by the institution to assess the institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the institution's loan-to-deposit ratio, loan originations for sale to the secondary market, lending-related activities in its assessment areas, record of engaging in lending-related activities for borrowers of different income levels and businesses and farms of different sizes, geographic distribution of loans, and record of taking action in response to written complaints about its performance. In addition to the lending test, intermediate small institutions are also subject to a community development test that evaluates the number and amount of the institution's community development loans and qualified investments, the extent to which the institution provides community development services, and the institution's responsiveness through such activities to community development lending, investment, and service needs.¹⁸

CRA Performance of Farmers Bank. Farmers Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Kansas City, as of October 22, 2012.¹⁹ Farmers Bank received "Satisfactory" ratings for both the lending test and the community development test.

Examiners determined that the bank's average net loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. In addition, examiners noted that Farmers Bank's distribution of loans by business and farm income level was reasonable in its assessment areas. For residential real estate loans, examiners noted that the level of lending by income level exceeded expectations in the Iowa assessment area and was reasonable in the Missouri assessment area. Examiners noted that the bank's lending in moderate income geographies exceeded demographics for small businesses, small farms, and residential real estate loans and was approaching excellent levels.

Examiners noted that the bank's community development performance demonstrated adequate responsiveness to community development needs throughout its assessment areas, and the bank had an adequate level of community development loans, investments, dona-

¹⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (2010).

¹⁷ 12 U.S.C. § 2906.

¹⁸ See 12 CFR 228.26.

¹⁹ Farmers Bank's CRA evaluation was conducted using Intermediate Small-Bank CRA Examination Procedures, consisting of the lending and community development tests described above. Examiners performed full-scope reviews of the bank's activities in Putnam, Daviess, Grundy, Harrison, and Mercer counties, Missouri, and Appanoose, Decatur, and Wayne counties, Iowa, during the six-month period ended on July 31, 2012.

tions, and services for the review period. Examiners also noted that the bank's delivery systems to geographies and individuals of different income levels were reasonably accessible. Examiners found no evidence of discriminatory or other illegal credit practices.

CRA Performance of Flowers Bank. Flowers Bank received an overall rating of "Outstanding" at its most recent CRA performance examination by the OCC, as of October 24, 2011.²⁰ Examiners determined that the bank's lending activities reflected excellent penetration among businesses and farms of different sizes. Examiners found that the bank's distribution of loans to small businesses was excellent and its loans to businesses with revenues of less than \$1 million per year exceeded demographics. Examiners noted that Flowers Bank's loan-to-deposit ratio reflected reasonable responsiveness to the credit needs of the community. Examiners also noted that a substantial majority of the bank's lending was within its assessment area and that Flowers Bank's investment activities enhanced credit availability in its assessment area.

Additional CRA Activities of Farmers Bank. Farmers Bank represents that it provides a wide variety of products and services that are designed to fit the needs of its entire community. Farmers Bank states that it encourages its employees to identify and engage in opportunities to provide financial education to low- and moderate-income families in the community, including schools and senior citizens' groups. Farmers Bank represents that its employees help provide courses on financial education at a local community college. Farmers Bank notes that it is currently considering investments in CRA-eligible small business investment companies.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Farmers Bank represents that customers of both banks will benefit by gaining access to the full range of products and services currently offered by both banks. For example, customers of Flowers Bank will gain access to new deposit account, mortgage, and variable-rate IRA products, and customers of Farmers Bank will gain access to a new fixed-rate IRA product. In addition, Farmers Bank's status as a preferred lender under the Farm Service Agency's guidelines will benefit customers of Flowers Bank because they will gain access to an abbreviated approval process for low- and moderate-income farmers, including beginning farmers. Moreover, Farmers Bank represents that customers of both banks will benefit from a larger network of branches and ATMs.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Farmers Bank, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

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."²¹

²⁰ Flowers Bank's CRA evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. Examiners performed a full-scope review of the bank's activities in five census tracts in Harrison and Mercer counties, Missouri, from January 1, 2009, through June 30, 2011.

²¹ 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).

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.²² 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 opacity 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.²³

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, NMB would have approximately \$388.8 million in consolidated assets and would not be likely to pose systemic risks. 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.

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 determines that considerations relating to financial stability are consistent with approval.

Establishment of Branches

Farmers Bank has applied under section 9 of the FRA to establish and operate branches at the current locations of Flowers Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.²⁴ Specifically, the Board has considered Farmers 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 Farmers 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 Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

²³ For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012).

²⁴ 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 Kansas City acting pursuant to delegated authority.

By order of the Board of Governors, effective November 13, 2015.

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

Margaret McCloskey Shanks
Deputy Secretary of the Board

Order Issued Under Federal Reserve Act

Chemical Bank
Midland, Michigan

*Order Approving Establishment of a Branch
FRB Order No. 2015–36 (December 30, 2015)*

Chemical Bank, a state member bank subsidiary of Chemical Financial Corporation, both of Midland, Michigan, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)¹ and the Board’s Regulation H² to operate a mobile branch to collect deposits and bank-related documents from business customers in certain counties in Michigan.³ The proposed mobile branch would be a branch under federal law because it would take deposits from Chemical Bank’s customers.⁴ However, Chemical Bank proposes to operate the mobile branch as a messenger service for purposes of Michigan law.⁵ Chemical Bank must obtain Board approval prior to expanding the branch activities of the proposed mobile branch beyond those activities permitted as state-law messenger services.⁶

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.⁷ The time for submitting comments has expired, and the Board has considered the application and all comments received in light of the factors specified in the FRA.

Chemical Financial Corporation is the eighth largest depository organization in Michigan, with 187 branches throughout the state and approximately \$7.3 billion in deposits, which represents approximately 3.8 percent of the total amount of deposits of insured depository institutions in the state.⁸

Under the Board’s Regulation H, which implements section 9 of the FRA, the factors that the Board must consider in acting on branch applications include (1) the financial history

¹ 12 U.S.C. § 321. See 12 U.S.C. § 36; Mich. Comp. Laws 487.13711 (permitting a Michigan state-chartered bank to establish and operate a mobile branch at any location within the State of Michigan). Although state law permits a state-chartered bank to establish and operate a mobile branch, Chemical Bank has not filed an application to establish a mobile branch with the Michigan Department of Insurance and Financial Services (“DIFS”). Instead, Chemical Bank proposes to operate the mobile branch as a messenger service under Michigan state law, which does not require the filing of a prior notice or application with the DIFS. Mich. Comp. Laws 487.14101.

² 12 CFR part 208.

³ The mobile branch would operate in the following counties, all in Michigan: Alcona, Allegan, Alpena, Antrim, Arenac, Bay, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Cheboygan, Charlevoix, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ionia, Iosco, Isabella, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Midland, Missaukee, Montcalm, Montmorency, Newaygo, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, Sanilac, Tuscola, Van Buren, and Wexford. Chemical Bank previously received approval to operate a mobile branch in the counties of Shiawassee and Genesee, both in Michigan. Chemical Bank would not operate the mobile branch in any other county in Michigan.

⁴ The Board’s Regulation H defines a branch as “any branch bank, branch office, branch agency, additional office, or any branch place of business that receives deposits, pays checks, or lends money.” 12 CFR 208.2(c)(1). Regulation H specifically provides that a branch may include a mobile facility. *Id.*

⁵ Under Michigan law, a Michigan state-chartered bank may operate a messenger service that engages in limited activities, including among other things, collecting deposits and picking up or delivering cash, currency, checks, drafts, securities, and certain other items. Mich. Comp. Laws 487.11202(m).

⁶ Under Michigan law, Chemical Bank must provide prior notice to the director of the DIFS to establish a mobile branch. Mich. Comp. Laws 487.13711.

⁷ 12 CFR 262.3(b).

⁸ Data are as of June 30, 2015. In this context, insured depository institutions include insured commercial banks, savings and loan associations, and savings banks.

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"),⁹ and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.¹⁰ The Board must consider these same factors in acting on mobile branch applications.

The Board has considered the application in light of these factors and the public comment on the proposal received from the chief executive officer of a prospective bank competitor headquartered in Cheboygan County, Michigan. The commenter asserts that its community's financial services needs are adequately met by the financial institutions currently operating there. The commenter also contends that Chemical Bank does not currently have, nor does it plan to establish, a physical presence in Cheboygan County.

Financial, Managerial, and Other Supervisory Considerations

In considering the financial history and condition, earnings prospects, and capital adequacy of Chemical Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Chemical Bank, and the comment received. Chemical Bank is well capitalized and would remain so upon consummation of the proposal. After considering all the facts of record, the Board concludes that the financial history and condition, capital adequacy, and future earnings prospects of Chemical Bank are consistent with approval of the proposal. The Board also has reviewed Chemical Bank's proposed investment in the mobile branch and concludes that its investment is consistent with regulatory limitations on investment in bank premises.¹¹

In considering Chemical 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 Chemical Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws, and the bank security procedures that would apply to the mobile branch.¹² Chemical Bank is considered to be well managed. Based on this review and all the facts of record, the Board concludes that the character of Chemical Bank's management, including the effectiveness of Chemical Bank in combatting money-laundering activities and Chemical Bank's branch security procedures, is consistent with approval of the proposal.

Convenience and Needs Considerations

In considering the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institution is helping to meet the credit needs of the communities it serves, as well as other potential effects of the proposal on the convenience and needs of the communities to be served.¹³ In this evaluation, the Board places particular emphasis on the record of the relevant depository institution under the CRA. The CRA requires the federal financial supervisory agencies to encourage

⁹ 12 U.S.C. § 2901 *et seq.*

¹⁰ 12 CFR 208.6(b).

¹¹ 12 CFR 208.21(a).

¹² *See* 12 CFR 208.61(c).

¹³ 12 CFR 208.6(b)(3).

insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,¹⁴ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.¹⁵

In addition, the Board considers the bank's overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. In addition, the Board may consider the institution's business model, its marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

Record of Performance under the CRA. In evaluating the convenience and needs factor and CRA performance, the Board considers an institution's performance in light of examinations and other supervisory information and information and views provided by the appropriate federal supervisors.¹⁶ The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.¹⁷ 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 by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's data reported under the Home Mortgage Disclosure Act of 1975¹⁸ in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on (1) the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; (2) the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;¹⁹ (4) the institution's community development lending, including the number and amount of community devel-

¹⁴ 12 U.S.C. § 2901(b).

¹⁵ 12 U.S.C. § 2903.

¹⁶ See *Interagency Questions and Answers Regarding Community Reinvestment*, 75 *Federal Register* 11642, 11665 (March 11, 2010).

¹⁷ 12 U.S.C. § 2906.

¹⁸ 12 U.S.C. § 2801 *et seq.*

¹⁹ Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

opment loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Chemical Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Chemical Bank, and the public comment received on the proposal.

CRA Performance of Chemical Bank. Chemical Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Chicago, as of August 26, 2013 ("Chemical Bank Evaluation").²⁰ Each rating Chemical Bank received under the lending, investment, and service tests was an "Outstanding."²¹

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

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

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

Additional CRA Activities of Chemical Bank. Chemical Bank represents that it provides a comprehensive range of banking and related financial services to meet the needs of individuals, families, and businesses in the communities it serves. Chemical Bank states that it

²⁰ The Chemical Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The Chemical Bank Evaluation reviewed home mortgage and small business lending data from January 1, 2011, through December 31, 2012. The evaluation period for community development loans, investments, and services was July 1, 2011, through August 26, 2013.

²¹ The Chemical Bank Evaluation included a full-scope review of five assessment areas: the Grand Rapids–Wyoming, Michigan, Metropolitan Statistical Area ("MSA"); the Niles–Benton Harbor, Michigan, MSA; the Bay City, Michigan, MSA; the Kalamazoo–Portage, Michigan, MSA; and the assessment area comprising 24 non-MSA counties of North Central Michigan. A limited-scope review was performed in the Battle Creek, Michigan, MSA; the Flint, Michigan, MSA; the Holland–Grand Haven, Michigan, MSA; the Saginaw–Saginaw Township North, Michigan, MSA; the Cass County, Michigan, Assessment Area; the assessment area comprising Huron, Sanilac, and Tuscola Counties, all in Michigan; the Branch County, Michigan, Assessment Area; and the Allegan County, Michigan, Assessment Area.

uses innovative and flexible lending practices designed to expand homeownership opportunities for LMI borrowers, such as offering mortgages insured by the Federal Housing Administration, government-guaranteed Rural Development mortgages, and the Michigan State Housing Development Authority's single-family mortgages. In addition, Chemical Bank is involved in the Michigan State Housing Development Authority Property Improvement Program, which provides home improvement loans to LMI individuals with incomes below 80 percent of the area median income. Chemical Bank also represents that it is a leader in its assessment areas in terms of its involvement in qualified community development organizations, including in underserved rural markets in which it operates. Chemical Bank offers several commercial loan products with flexible terms to serve the needs of small business customers in its communities, including Small Business Administration loans, loans under the Capital Access Program operated by the State of Michigan, and loans under the Federal Home Loan Bank Programs for Community Investments.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Chemical Bank would use the mobile branch to expand the availability of services to customers throughout its current CRA assessment areas. As noted above, a commenter objected to the proposal and alleged that Cheboygan County's financial services needs are adequately met by the financial institutions currently operating there. The Board generally considers the entry of a new competitor into a community to be a positive factor when assessing the effect of a proposal on the convenience and needs of the community because new entry provides additional alternatives for consumers and businesses.²² Chemical Bank represents that its business relationships already extend into Cheboygan County, and the proposed mobile branch would allow it to better serve the county's residents and the surrounding communities. Chemical Bank notes that the mobile branch would enhance the convenience and efficiency of the services it provides to its business customers as well as to public schools, municipalities, and other governmental entities.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the records of Chemical Bank under the CRA, the bank's record of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Chemical Bank, the public comment on the proposal, and the potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. The Board's approval is specifically conditioned on Chemical 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 Board's approval is limited to conducting the proposed deposit- and document-collection services. Chemical Bank must seek Board approval before engaging in additional branch activities through the mobile branch. Furthermore, Chemical Bank must seek Board approval if it wishes to expand the areas in which it may provide mobile branch services.²³ 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.

²² See *Adams Bank & Trust*, FRB Order 2013-6 (September 4, 2013).

²³ See *supra* note 3.

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 Federal Reserve Bank of Chicago acting under delegated authority.

By order of the Board of Governors, effective December 30, 2015.

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

Robert deV. Frierson
Secretary of the Board

Orders Issued Under International Banking Act

Royal Bank of Canada
Montreal, Canada

*Order Approving Establishment of a Branch
FRB Order No. 2015–29 (October 7, 2015)*

Royal Bank of Canada, Montreal, Canada (“RBC”), a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 7(d) of the IBA¹ to establish a limited federal branch in Jersey City, New Jersey. The IBA provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Jersey City, New Jersey (*The Jersey Journal*, September 12, 2014). The time for submitting comments has expired, and the Board has considered all comments received.

RBC, with consolidated assets of approximately \$832 billion, is the second largest bank in Canada.² RBC offers a range of commercial, wealth management, and retail banking products. In addition to its Canadian and U.S. activities, RBC operates in over 44 countries through a network of branches, local banks, and nonbank subsidiaries.³ RBC is a qualifying foreign banking organization under Regulation K.⁴

Under section 5 of the IBA, a foreign bank may establish a branch outside its home state under certain conditions. One set of conditions permits a foreign bank to establish a branch outside its home state if the establishment and operation of such branch is permitted by the state in which the branch is to be established and the branch limits its deposit-taking to that of an Edge corporation operating under section 25A of the Federal Reserve Act.⁵ RBC meets the requirements to establish an interstate branch pursuant to these conditions in section 5 of the IBA in this case.⁶ Consistent with the restrictions on a limited branch, the proposed branch would not take any deposits other than those permitted for a corporation organized under section 25A of the Federal Reserve Act.⁷ The proposed branch would also provide similar services to those provided by its New York branches, which include credit and financial services primarily focused on institutional clients and capital market activities.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank and any foreign bank

¹ 12 U.S.C. § 3105(d).

² Asset and ranking data are as of July 31, 2015, and are based on the exchange rate as of that date.

³ In the United States, RBC operates a bank subsidiary, RBC Bank (Georgia), National Association, Atlanta, Georgia; three federal branches in New York, New York (“New York branches”); an agency in Dallas, Texas; representative offices in San Francisco, California, Wilmington, Delaware, and Seattle, Washington; and a broker-dealer, RBC Capital Markets LLC, in New York, New York.

⁴ 12 CFR 211.23(a).

⁵ 12 U.S.C. § 3103(a)(7)(A).

⁶ A foreign bank may also establish a full-service branch if it meets other conditions in the IBA. 12 U.S.C. § 3103(a)(7)(B).

⁷ RBC’s home state is New York. Under section 25A of the Federal Reserve Act, an Edge corporation may receive deposits outside the United States and may receive only such deposits in the United States that are incidental to, or for the purpose of carrying out, transactions in foreign countries. 12 U.S.C. § 615(a). Regulation K defines the extent of permissible deposit-taking activities of Edge corporations. 12 CFR 211.6(a)(1).

parent engage directly in the business of banking outside of the United States, (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁸ The Board also considers the financial and managerial resources of the organization, the convenience and needs of the community, and other factors set forth in the IBA and Regulation K.⁹

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

With respect to supervision by home country authorities, the Board has previously determined that RBC is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the Office of the Superintendent of Financial Institutions (“OSFI”).¹⁰ Based on all the facts of record, it has been determined that RBC continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

The Board has also considered the financial and managerial, and other, factors required by the IBA. Canada’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Accord”). RBC’s capital is in excess of the minimum levels that would be required by the Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of RBC are considered consistent with approval, and RBC appears to have the experience and capacity to support the proposed limited branch. In addition, RBC has established controls and procedures for the proposed branch to ensure compliance with U.S. law and for its operations in general.

⁸ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

⁹ 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank’s home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank’s record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

¹⁰ *RBC Investor Services Bank S.A.*, FRB Order No. 2013-15 (Dec. 17, 2013); *Royal Bank of Canada*, 94 *Federal Reserve Bulletin* C45 (2008); *Royal Bank of Canada*, 83 *Federal Reserve Bulletin* 442 (1997).

The OSFI has no objection to the establishment of the proposed branch. Canada is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Canada has enacted laws and created legislative and regulatory standards to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Canada, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. RBC has policies and procedures to comply with these laws and regulations, and RBC's compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

With respect to access to information on RBC's operations, the restrictions on disclosure in relevant jurisdictions in which RBC operates have been reviewed, and relevant government authorities have been contacted regarding access to information. RBC has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, RBC has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that RBC has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.¹¹ Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of RBC in its home jurisdiction; the size, type, and scope of the activities RBC proposes to conduct in the United States, including the potential for those activities to increase or transmit financial instability; and the framework in place for supervising RBC in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by RBC as well as to the terms and conditions set forth in this order, RBC's application to establish a limited federal branch in New Jersey is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹² Should any restrictions on access to information on the operations or activities of RBC and its affiliates subsequently interfere with the Board's ability to determine and enforce compliance by RBC or its affiliates with applicable federal statutes, the Board may require termination of any of RBC's direct or indirect activities in the United States. Approval of this application also is specifically condi-

¹¹ Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.S.C. §3105(d)(3)(E).

¹² 12 CFR 265.7(d)(12).

tioned on compliance by RBC with the commitments made in connection with this application and with the conditions in this order.¹³

By order, approved pursuant to authority delegated by the Board, effective October 7, 2015.

Robert deV. Frierson
Secretary of the Board

¹³ The Board's authority to approve the establishment of branches parallels the continuing authority of the Office of the Comptroller of the Currency ("OCC") to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the OCC to license the proposed branch of RBC in accordance with any terms and conditions that it may impose.

Korea Exchange Bank Seoul, Republic of Korea

Order Approving the Establishment of an Agency FRB Order No. 2015–31 (October 27, 2015)

Korea Exchange Bank (“KEB”), Seoul, Republic of Korea, a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 7(d) of the IBA¹ to retain the agency currently operated in New York, New York, by Hana Bank, Seoul, Republic of Korea, following an internal reorganization that involved KEB’s merger with its affiliate, Hana Bank.² The IBA provides that a foreign bank must obtain the approval of the Board to establish an agency in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, July 30, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

KEB, with total consolidated assets of approximately \$107 billion, is the fifth largest commercial bank in Korea by asset size.³ KEB’s shares are widely held, with no shareholder or group of shareholders controlling more than 10 percent of its outstanding shares.⁴ KEB engages in a broad range of retail and commercial banking activities through numerous offices and subsidiaries located throughout the world. Outside Korea, KEB has operations in the United States and over 20 other countries.

In the United States, KEB operates three wholly owned subsidiaries: KEB NY Financial Corp., New York, New York; KEB LA Financial Corp., Los Angeles, California; and KEB USA International Corp., New York, New York.⁵ KEB is a qualifying foreign banking organization under Regulation K.⁶

KEB and Hana Bank have been affiliated foreign banks since 2012. On August 27, 2015, KEB received approval, pursuant to section 211.24(a)(6) of the Board’s Regulation K, to proceed with the merger of KEB and Hana Bank prior to Board action on KEB’s application to establish an agency in the United States through retention of the Hana Bank agency.⁷ The merger of KEB and Hana Bank was completed on September 1, 2015.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish an agency, the Board must consider whether (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, (2) the

¹ 12 U.S.C. § 3105(d).

² On September 1, 2015, Hana Bank merged with and into Korea Exchange Bank to form “KEB Hana Bank.”

³ Asset data are as of March 31, 2015. Ranking data are as of December 31, 2014.

⁴ As of December 31, 2014, the National Pension Service of Korea, Franklin Resources, and BlackRock owned 9.5 percent, 7.0 percent, and 5.1 percent, respectively, of the voting shares of Hana Financial Group, Seoul, Republic of Korea, the ultimate parent of KEB. No other person owned 5 percent or more of the voting shares of KEB and its ultimate parent. There are no voting agreements or other mechanisms that exist among shareholders for the exercise of control over Hana Financial Group.

⁵ KEB USA International Corp. engages in activities limited to providing administrative back-office functions to KEB, pursuant to section 4(c)(1)(C) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(c)(1)(C)).

⁶ 12 CFR 211.23(a).

⁷ See Letter dated August 27, 2015, from the Board to Mr. William S. Eckland, Sidley Austin LLP. Consistent with 12 CFR 211.24(a)(6), KEB provided commitments to the Board to not engage in any new lines of business or expand its U.S. activities until the disposition of the application and to abide by the Board’s decision on KEB’s application to establish an agency, including, if necessary, a decision to require the termination of the activities of the agency.

foreign bank has furnished to the Board the information it needs to assess the application adequately, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁸ The Board also considers additional standards set forth in the IBA and Regulation K.⁹

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

The Board previously has determined that KEB is subject to comprehensive supervision on a consolidated basis by its home country supervisor, the Korean Financial Supervision Service (“FSS”).¹⁰ KEB remains supervised by the FSS on substantially the same terms and conditions. Based on all the facts of record, it has been determined that KEB continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

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

The Board has also considered the financial and managerial factors and other factors required by the IBA. Korea’s risk-based capital standards are consistent with those established by the Basel Capital Accord (“Basel Accord”). KEB’s capital is in excess of the minimum levels that would be required by the Basel Accord and is considered equivalent to capital that would be required of a U.S. banking organization. Managerial and other financial resources of KEB are considered consistent with approval, and KEB appears to have the experience and capacity to support the proposed agency. In addition, KEB has established controls and procedures for the proposed agency to ensure compliance with U.S. law and for its operations in general.

⁸ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to an affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports, audit reports, or otherwise; (iii) obtain information on the dealings with and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

⁹ 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2)–(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank’s home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank’s record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

¹⁰ *Hana Financial Group*, FRB Order No. 2013-4 (August 14, 2013).

Korea is a member of the Financial Action Task Force and subscribes to its recommendations on measures to combat money laundering and international terrorism. In accordance with these recommendations, Korea has enacted laws and regulations to deter money laundering that are consistent with the Financial Action Task Force's recommendations. Money laundering is a criminal offense in Korea, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. KEB has policies and procedures to comply with these laws and regulations, and its compliance is monitored by governmental entities responsible for anti-money-laundering compliance.

KEB has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, KEB has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that KEB has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.¹¹ Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to (1) the size and scope of KEB's activities, including the type of activities it proposes to conduct, in the United States and the potential for those activities to increase or transmit financial instability; and (2) the framework in place for supervising KEB in its home jurisdiction. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by KEB as well as to the terms and conditions set forth in this order, KEB's application to establish an agency in New York is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹² Should any restrictions on access to information on the operations or activities of KEB and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by KEB or its affiliates with applicable federal statutes, the Board may require termination of any of KEB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Bank with the commitments made in connection with this application and with the conditions in this order.¹³

¹¹ Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.S.C. § 3105(d)(3)(E).

¹² 12 CFR 265.7(d)(12).

¹³ The Board's authority to approve the establishment of an agency parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York and its agent, the New York State Department of Financial Services, to license the proposed agency of KEB in accordance with any terms and conditions that the New York State Department of Financial Services might impose. The New York State Department of Financial Services approved KEB's application to establish the agency on August 31, 2015.

By order, approved pursuant to authority delegated by the Board, effective October 27, 2015.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Taiwan Business Bank, Ltd.
Taipei, Taiwan

*Order Approving Establishment of a Branch
FRB Order No. 2015–37 (December 31, 2015)*

Taiwan Business Bank, Ltd. (“TBB”), Taipei, Taiwan, a foreign bank within the meaning of the International Banking Act of 1978 (“IBA”), has applied under section 7(d) of the IBA¹ to establish a state-licensed branch in New York, New York. The Foreign Bank Supervision Enhancement Act of 1991, which amended the IBA, provides that a foreign bank must obtain the approval of the Board to establish a branch in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in New York, New York (*New York Post*, January 16, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

TBB, with consolidated assets of approximately \$45 billion, is the 14th largest bank in Taiwan.² TBB is a subsidiary of Bank of Taiwan (“BOT”), Taipei.³ Taiwan Financial Holding Company, Ltd. is wholly owned by Taiwan’s Ministry of Finance and owns all of BOT’s shares. TBB offers a variety of traditional banking products and services, including corporate and consumer loans, trade finance, foreign exchange, trust, and credit card services. Outside Taiwan, TBB operates branches in Hong Kong, Shanghai, Sydney, and Brisbane. In the United States, TBB operates a state-licensed branch in Los Angeles, California. TBB is a qualifying foreign banking organization under Regulation K.⁴

TBB’s parent bank, BOT, with consolidated assets of approximately \$151 billion, is the largest commercial bank in Taiwan. The bank offers a range of commercial, investment, and retail banking products. Outside Taiwan, BOT operates branches in Hong Kong, Johannesburg, London, Singapore, Tokyo, and Shanghai, and a representative office in Mumbai. In the United States, BOT operates state-licensed branches in New York, New York, and Los Angeles, California. BOT is a qualifying foreign banking organization under Regulation K.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a branch, the Board must consider whether (1) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, (2) the foreign bank has furnished to the Board the information it needs to assess the application adequately, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.⁵ The Board also considers additional standards as set forth in the IBA and Regulation K.⁶

¹ 12 U.S.C. § 3105(d).

² Asset data are as of June 30, 2015, and are based on the exchange rate as of that date. Ranking data are as of December 31, 2014.

³ BOT owns approximately 17.2 percent of the voting shares of TBB and has three of the 15 seats on TBB’s board of directors.

⁴ 12 CFR 211.23(a).

⁵ 12 U.S.C. § 3105(d)(2); 12 CFR 211.24. Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisors receive sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular examination reports,

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

The Federal Reserve previously has determined that TBB and BOT are subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Financial Supervisory Commission (“FSC”).⁷ TBB and BOT remain supervised by the FSC on substantially the same terms and conditions. Based on all the facts of record, it has been determined that TBB and BOT continue to be subject to comprehensive supervision on a consolidated basis by their home country supervisor.

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

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

Taiwan has enacted laws and regulations to deter money laundering that are consistent with Financial Action Task Force recommendations. Money laundering is a criminal offense in Taiwan, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. TBB has policies and procedures to comply with these laws and regulations, and TBB’s compliance with applicable laws and regulations is monitored by governmental entities responsible for anti-money-laundering compliance.

TBB has committed to make available to the Board such information on its operations and on those of any of its affiliates that the Board deems necessary to determine and enforce

audit reports, or otherwise; (iii) obtain information on the dealings and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

⁶ 12 U.S.C. § 3105(d)(3)-(4) and 12 CFR 211.24(c)(2)-(3). The additional standards set forth in section 7 of the IBA and Regulation K include the following: (i) whether the bank’s home country supervisor has consented to the establishment of the office; (ii) the financial and managerial resources of the bank; (iii) whether the bank has procedures to combat money laundering, whether there is a legal regime in place in the home country to address money laundering, and whether the home country is participating in multilateral efforts to combat money laundering; (iv) whether the appropriate supervisors in the home country may share information on the bank’s operations with the Board; (v) whether the bank has provided the Board with adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA and other applicable federal banking statutes; (vi) whether the bank and its U.S. affiliates are in compliance with U.S. law; (vii) the needs of the community; and (viii) the bank’s record of operation. The Board also considers, in the case of a foreign bank that presents a risk to the stability of the United States, whether the home country of the bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk. 12 U.S.C. § 3105(d)(3)(E).

⁷ *Taiwan Business Bank*, 81 *Federal Reserve Bulletin* 746 (1995); *Bank of Taiwan* (order dated June 27, 2011), 97 *Federal Reserve Bulletin* 56 (2nd Quar. 2011).

compliance with the IBA, the Bank Holding Company Act of 1956, and other applicable federal law. To the extent that the provision of such information to the Board may be prohibited by law or otherwise, TBB has committed to cooperate with the Board to obtain any necessary consents or waivers that might be required from third parties for disclosure of such information. In light of these commitments and other facts of record, it has been determined that TBB has provided adequate assurances of access to any necessary information that the Board may request.

Section 173 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the IBA to provide that the Board may consider, for a foreign bank that presents a risk to the stability of the United States financial system, whether the home country of the foreign bank has adopted, or is making demonstrable progress toward adopting, an appropriate system of financial regulation for the financial system of such home country to mitigate such risk.⁸ Information relevant to the standard regarding risk to the stability of the United States financial system has also been reviewed. In particular, consideration has been given to the absolute and relative size of TBB in its home jurisdiction; the scope of TBB’s activities, including the types of activities it proposes to conduct in the United States and the potential for those activities to increase or transmit financial instability; and the framework in place for supervising TBB in its home jurisdiction. Based on these and other factors, financial stability considerations for this proposal are consistent with approval.

The IBA establishes criteria that must be met before the Board can approve the establishment of a branch outside a foreign bank’s home state. TBB’s home state is California. Under section 5(a)(2) of the IBA, as amended by section 104 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,⁹ a foreign bank, with the approval of the Board and the appropriate state supervisory agency, may establish and operate a state-licensed branch in any state outside its home state to the extent that a state-chartered bank with the same home state as the foreign bank could do so under section 18(d)(4) of the Federal Deposit Insurance Act (“FDI Act”). Section 18(d)(4), which previously authorized states to “opt in” to interstate de novo branching, was amended by section 613 of the Dodd-Frank Act to permit insured state banks to establish interstate de novo branches nationwide.¹⁰ It has been determined that all the other criteria referred to in section 5(a)(1) and 5(a)(3) of the IBA, including the criteria in section 7(d) of the IBA, have been met.¹¹ In view of all the facts of record, the Board is permitted to approve the establishment of an interstate de novo state-chartered branch by TBB under section 5(a) of the IBA.

On the basis of all the facts of record, and subject to the commitments made by TBB as well as the terms and conditions set forth in this order, TBB’s application to establish a branch in New York is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.¹² Should any restrictions on access to information on the operations or activities of TBB and its affiliates subsequently interfere with the Board’s ability to

⁸ Pub. L. No. 111-203, 124 Stat. 1376, 1440 (2010), codified at 12 U.S.C. § 3105(d)(3)(E).

⁹ 12 U.S.C. § 3103(a)(2).

¹⁰ Pub. L. No. 111-203, 124 Stat. 1376, 1614 (2010), codified at 12 U.S.C. § 1828(d)(4)(A)(i).

¹¹ Section 18(d)(4) of the FDI Act and section 5(a) of the IBA require that certain conditions of section 44 of the FDI Act be met in order for the Board to approve a de novo interstate state-chartered branch. *See* 12 U.S.C. § 1848(d)(4)(B) and 12 U.S.C. § 1303(a)(3)(C) (referring to sections 44(b)(1), 44(b)(3), and 44(b)(4) of the FDI Act and 12 U.S.C. § 1831u(b)(1), (b)(3), and (b)(4)). It has been determined that TBB is in compliance with state filing requirements. TBB was adequately capitalized as of the date the application was filed, and on consummation of this proposal TBB would be well capitalized and well managed.

¹² 12 CFR 265.7(d)(12).

obtain information to determine and enforce compliance by TBB or its affiliates with applicable federal statutes, the Board may require termination of any of TBB's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by TBB with the commitments made in connection with this application and with the conditions in this order.¹³

By order, approved pursuant to authority delegated by the Board, effective December 31, 2015.

Robert deV. Frierson
Secretary of the Board

¹³ The Board's authority to approve the establishment of branches parallels the continuing authority of the State of New York to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of New York and its agent, the New York State Department of Financial Services, to license the proposed branch of TBB in accordance with any terms and conditions that the New York State Department of Financial Services may impose.

Order Issued Under Home Owners' Loan Act

Synchrony Financial
Stamford, Connecticut

Order Approving a Savings and Loan Holding Company and Certain Activities
FRB Order No. 2015-30 (October 14, 2015)

Synchrony Financial, Stamford, Connecticut, has requested the Board's approval under section 10(e) of the Home Owners' Loan Act, as amended ("HOLA"),¹ to operate as a publicly owned savings and loan holding company ("SLHC") and retain control of its subsidiary federal savings association, Synchrony Bank ("Synchrony Bank" or the "Bank"), Draper, Utah. Synchrony Financial has also requested the Board's approval under section 10(c) of HOLA and section 238.51(b) of the Board's Regulation LL to continue to engage in certain business activities through its control of numerous non-savings association subsidiaries.² General Electric Company ("GE"), General Electric Capital Corporation ("GECC"), and GE Consumer Finance, Inc. ("GECFI"), currently own and control, either directly or indirectly, 84.6 percent of the outstanding shares of Synchrony Financial's common stock.³ Under the proposal, GE would offer its shareholders the opportunity to exchange shares of GE common stock for shares of Synchrony Financial common stock. Synchrony Financial will become a stand-alone SLHC upon consummation of the exchange offer.

Notices of the proposal, affording interested persons an opportunity to submit comments, have been published (80 *Federal Register* 26257 (May 7, 2015); 80 *Federal Register* 29321 (May 21, 2015)).⁴ The time for submitting comments has expired, and the Board has considered the proposal and the factors set forth in sections 10(c) and (e) of HOLA in light of all the information of record.⁵

Synchrony Financial, with consolidated assets of approximately \$75.8 billion, controls Synchrony Bank and is the 36th largest insured depository organization in the United States, controlling approximately \$37.8 billion in deposits, which represent less than 1 percent of the total amount of deposits in the United States.⁶ Synchrony Financial provides a range of credit and deposit products to North American consumers. Synchrony Bank has a main office in Utah and operates a single branch in New Jersey.

Factors Governing Evaluation of the Proposal

In evaluating a proposal to establish an SLHC under section 10(e) of HOLA, the Board is required to consider the competitive effects of the proposal; the financial and managerial resources and future prospects of the applicant and savings association involved; the convenience and needs of the community to be served, including the record of performance

¹ 12 U.S.C. § 1467a(e).

² 12 U.S.C. § 1467a(c). See the appendix for a listing of these subsidiaries and their respective activities.

³ The remaining 15.4 percent of Synchrony Financial's common stock is publicly traded. No single shareholder holds more than 5 percent of the publicly traded stock.

⁴ 12 CFR 238.14(c)(2) and 238.53(e).

⁵ 12 U.S.C. §§ 1467a(c)(4)(B) and (e)(2); see also 12 CFR 238.54(c) and 238.15.

⁶ Asset, deposit, and ranking data are as of June 30, 2015, unless otherwise noted.

under the Community Reinvestment Act (“CRA”);⁷ and the effect of the acquisition on the savings association and the insurance risk to the Deposit Insurance Fund.⁸

Section 10(c)(4) of HOLA, governing SLHC holding company activities, requires the Board to consider whether the performance of a particular activity 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 of such activity (such as undue concentration of resources or decreased or unfair competition, conflicts of interest, or unsound financial practices).⁹ As part of this evaluation, the Board is also required to consider the managerial and financial resources, including capital, of the companies involved.¹⁰

Competitive Considerations

Section 10(e)(2) of HOLA prohibits the Board from approving a proposal that would result in a monopoly, or that would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States.¹¹ HOLA also prohibits the Board from approving a proposal the effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or that in any other manner would be in restraint of trade, 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.¹² In addition, the Board must consider the competitive effects of a proposal to acquire a non-savings association company under the balancing test of section 10(c)(4) of HOLA.¹³

The proposal is a re-organization and divestiture of a savings association by its current owner without a combination with another depository institution. Accordingly, the proposal would not decrease competition in any market.

The Department of Justice 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 any relevant market, including any savings and loan markets. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

In reviewing proposals under HOLA, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information

⁷ 12 CFR 238.15(b)(3).

⁸ 12 U.S.C. § 1467a(e)(2); *see also* 12 CFR 238.15.

⁹ 12 U.S.C. § 1467a(c)(4)(B)(i); *see also* 12 CFR 238.54(c).

¹⁰ 12 U.S.C. § 1467a(c)(4)(B)(ii)-(iii); *see also* 12 CFR 238.54(c).

¹¹ 12 U.S.C. § 1467a(e)(2)(A); *see also* 12 CFR 238.15(a)(1).

¹² 12 U.S.C. § 1467a(e)(2)(B); *see also* 12 CFR 238.15(a)(2).

¹³ 12 U.S.C. § 1467a(c)(4)(B)(i).

regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of public and supervisory information regarding 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. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.¹⁴ 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.

Synchrony Financial and Synchrony Bank are both well capitalized and would remain so on consummation of the proposal.¹⁵ As described above, the proposed transaction is structured as a share exchange, in which GE shareholders will be given the opportunity to exchange shares of GE common stock for shares of Synchrony Financial common stock. Consummation of the proposal would eliminate GE as a source of strength for Synchrony Financial and Synchrony Bank; however, it would also allow Synchrony Financial direct and full access to the capital markets in the same manner and degree as other depository institutions of similar size, structure, and operations. The asset quality, earnings, and liquidity of Synchrony Financial and Synchrony Bank are consistent with approval. In addition, future prospects are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved.¹⁶ In evaluating the managerial resources of the company or savings association, the Board considers the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or savings association; their record of compliance with laws and regulations; and the record of the company or savings association and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.¹⁷ Synchrony expects to replace five existing directors with five new, independent directors. The management of Synchrony Financial and Synchrony Bank are otherwise proposed to remain the same as currently. Accordingly, the Board has reviewed the examination records of Synchrony Bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered information provided by Synchrony Financial, the Board's supervisory experiences with Synchrony Financial and those of other relevant bank supervisory agencies with the organization, and Synchrony Financial's record of compliance with applicable banking, consumer protection, and anti-money-laundering laws.

Synchrony Financial's existing risk-management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Synchrony Financial have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Synchrony Financial's plans for implementing the proposal. Synchrony Financial is devoting significant financial and other resources to expand its infrastructure to support its operation as a stand-alone organization. In particular,

¹⁴ 12 CFR 238.15(b)(1).

¹⁵ The Board considered the leverage ratio, total risk-based capital ratio, tier 1 risk-based capital ratio, and common equity tier 1 risk-based capital ratio of the consolidated assets of Synchrony Financial and Synchrony Bank.

¹⁶ 12 CFR 238.15(b)(2).

¹⁷ See 12 U.S.C. § 1467a(e)(1)(B); 12 CFR 238.15(b)(2).

Synchrony Financial has developed stand-alone corporate governance, capital planning, information technology, compliance, regulatory, internal audit, and other control operations and infrastructure. Synchrony Financial has also developed its own stand-alone risk-management policies and processes. These actions are considered acceptable from a supervisory perspective. In addition, Synchrony Financial's management has the experience and resources to ensure that the organization can continue to operate in a safe and sound manner.

Based on all the facts of record, including Synchrony Financial's supervisory record, managerial and operational resources, and plans for operating the institution on a stand-alone basis after consummation, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organization involved in the proposal, as well as Synchrony Financial's record of compliance with applicable banking laws, including anti-money-laundering laws, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 10(e) of HOLA, the Board considers the effect of the transaction on the convenience and needs of the communities to be served.¹⁸ The Board also takes the convenience and needs of the communities to be served into consideration in the balancing test under section 10(c)(4) of HOLA.¹⁹ In its evaluation of the effect of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of the communities to be served. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the CRA.²⁰ 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,²¹ and requires the appropriate federal financial supervisory agency to assess a depository institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods.²²

In addition, the Board considers the institution's overall compliance record and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, and information provided by the applicant. The Board may also consider the institution's business model, its marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant. In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of Synchrony Bank, the fair lending and compliance records of Synchrony Bank, the supervisory views of the Office of the Comptroller of the Currency ("OCC") and the Consumer Financial Protection Bureau ("CFPB"), confidential supervisory information, and information provided by Synchrony Financial.

¹⁸ 12 U.S.C. § 1467a(e)(2); 12 CFR 238.15(b)(3).

¹⁹ 12 U.S.C. § 1467a(e)(4)(B)(i).

²⁰ 12 CFR 238.15(b)(3).

²¹ 12 U.S.C. § 2901(b).

²² 12 U.S.C. § 2903.

The OCC and CFPB have each conducted consumer compliance examinations of Synchrony Bank. The Board has reviewed those examination reports and consulted with the OCC and CFPB regarding Synchrony Bank's record of compliance with fair lending and other consumer protection laws and regulations and the Bank's policies and procedures to help ensure compliance with fair lending and other consumer protection laws and regulations. Synchrony Bank intends to maintain these policies and procedures following consummation of the transaction.

Record of Performance Under the CRA. The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.²³ 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 by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's Home Mortgage Disclosure Act data in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's loans in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;²⁴ the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating and the rating on the lending test to be important indicators, when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of Synchrony Bank. Synchrony Bank was assigned an overall "Outstanding" rating by the OCC at its most recent CRA performance evaluation, as of December 31, 2012 ("CRA Evaluation").²⁵ Due to Bank's designation as a limited-purpose

²³ 12 U.S.C. § 2906.

²⁴ Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less; small business and small farm loans by loan amount at origination; and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. *See, e.g.*, 12 CFR 228.22(b)(3).

²⁵ At the time of the CRA Evaluation, Synchrony Bank operated under the name "GE Capital Retail Bank, FSB." The institution changed its name to "Synchrony Bank" on June 2, 2014. The Bank was designated as a limited-purpose savings association for CRA evaluation purposes effective May 1, 2009; therefore, the CRA Evaluation was conducted using examination procedures for limited-purpose institutions. Examiners reviewed community development activities from October 1, 2009, through December 31, 2012, and reviewed the level and nature of qualified investments, community development lending, and community development services.

savings association for CRA evaluation purposes, examiners considered the following rating criteria: (1) level of community development lending, community development services, and qualified investment activity; (2) use of innovative or complex qualified investments, community development loans, and community development services; and (3) responsiveness to credit and community development needs in the institution's assessment area. Synchrony Bank was found to demonstrate (1) a high level of community development lending, community development services, and qualified investment activities; (2) occasional use of innovative or complex qualified investments, community development loans, and community development services; and (3) excellent responsiveness to credit and community development needs in the Bank's assessment area.

Examiners found that Bank provided significant levels of community development lending, community development services, and qualified investment activity in and outside Bank's assessment area. Examples of community development loans cited by examiners included Bank's partnership and leadership role with a consortium of 29 financial institutions that offers flexible financing for new construction or rehabilitation of multifamily affordable-housing development projects; its leadership role in the creation of a small business loan pool in response to community needs; and its extension of credit with flexible terms to support a local city government in the acquisition and rehabilitation of targeted single-family properties. Examiners noted that employees of Bank and its affiliates contributed significant time to community development services during the review period, including service with organizations dedicated to affordable housing, financial education, and support for women seeking employment. In particular, examiners noted Bank officers' efforts to initiate a small business educational program that guides women entrepreneurs to develop skills in planning and operating their own businesses and provides mentors and access to financing for graduates of the program. Significant qualified investment activities included the purchase of securities backed by mortgages to LMI borrowers in the assessment area, investments in small business investment companies, and grants and financial support for programming at schools serving primarily LMI households in the assessment area.

Examiners noted Bank's use of innovative or complex qualified investments, community development loans, and community development services. In particular, examiners cited projects that included financing a multifinancial institution consortium that offers permanent financing for low-income housing and multifamily affordable housing in the Utah area; assembling a complex small business loan pool with several other banks; and creating a program to assist women in developing the skills and knowledge needed to become small business entrepreneurs.

Examiners found Bank to be responsive to credit and community development needs in its assessment area. In particular, examiners noted that identified needs in Bank's assessment area for small business development, financial education, and affordable housing were addressed by Bank through such initiatives as the creation of the small business education program for women noted above, Bank's investment in a small business investment company, and community development loans and investments designed to finance affordable housing.

At Bank's request, examiners also considered qualified investments, community development lending, and community development services provided by Bank's affiliates. The assessment area of the CRA Evaluation was defined as the Salt Lake City, UT Metropolitan Statistical Area ("Salt Lake City MSA"). The Salt Lake City MSA is comprised of Salt Lake, Summit, and Tooele Counties. If a bank has adequately addressed its assessment area needs, examiners consider community development activities a bank submits that benefit areas outside its assessment area in the evaluation of its performance. As discussed further below, because Bank had adequately addressed the needs of its assessment area, community development activities benefiting areas outside the assessment area were considered in evaluating Bank's performance.

Synchrony Bank's Efforts Since the 2012 CRA Evaluation. Synchrony Bank represents that since the CRA Evaluation, Bank has made additional community development loans and qualified investments benefiting its assessment area. The Bank has also expanded its CRA staff and provided volunteer community development services focused on financial education for LMI households in Utah. Synchrony Bank has indicated that it will continue its focus on community development services and on internal targets for CRA performance.

Additional Convenience and Needs Considerations. The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Synchrony Financial has represented that its separation from GE would enable it to operate as a finance company independent of the needs of its current parent holding companies, GE and GECC. In particular, Synchrony Financial stated that its strategic and competitive actions will no longer be limited by the broader strategic and commercial considerations that are inherent in being a subsidiary of large, highly complex organizations such as GE and GECC.

Synchrony Financial also represented that it does not anticipate any diminution in the products and services it currently offers. Rather, Synchrony Financial intends to offer additional products to its customers and may expand its small business lending activities. Synchrony Bank intends to re-launch a consumer-based general purpose credit card that will offer customers greater financial flexibility and convenience as well as permit Bank to expand its consumer banking experience. The Bank also intends to introduce a demand-deposit checking account with features such as debit card access, overdraft protection, and bill payment capabilities. The Bank further intends to enhance its digital platform by integrating credit card accounts into “digital wallets” that can be accessed through mobile devices that allow consumers to shop and pay for goods and services using their smart phones and tablets. In addition, Synchrony Financial has invested resources into developing a stand-alone risk-management function and information security capabilities to strengthen the safety and soundness of its own operations.

The proposal will also reduce the systemic footprint of GECC – a large systemically important institution – and will accordingly simplify GECC’s organizational structure, thus making GECC easier to resolve.

Conclusion on Convenience and Needs Considerations. The Board has considered all the facts of record, including the record of Synchrony Bank under the CRA, its record of compliance with fair lending and other consumer protection laws, consultations with the OCC and the CFPB, confidential supervisory information, information provided by Synchrony Financial, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that review, the Board concludes that the convenience and needs factor is consistent with approval.

Effect of Transaction on the Bank and Insurance Risk to the Deposit Insurance Fund

In acting on a proposal under section 10(e) of HOLA, the Board considers the likely effect of the transaction on the savings association and any insurance risk to the Deposit Insurance Fund.²⁶ The proposal would establish of Synchrony Financial as a stand-alone SLHC. As discussed above, the financial and managerial resources and future prospects of the organization are consistent with approval. The proposal would provide Synchrony Financial with direct and full access to capital markets. In addition, Synchrony Financial and

²⁶ 12 U.S.C. § 1467a(e)(2).

Synchrony Bank have taken and continue to take steps to strengthen their internal risk-management systems in connection with this transaction. The Board has considered the likely effect of the transaction on the Bank and believes that it is consistent with approval. In addition, in view of Synchrony Financial and Synchrony Bank's current resources, capital, and future prospects; the significant financial and other resources being devoted to support the independent operation of Synchrony Financial and Synchrony Bank; and the managerial resources of Synchrony Financial and Synchrony Bank; the Board after consulting with the Federal Deposit Insurance Corporation, believes that the proposal would not appear likely to have any material effect on the insurance risk to the Deposit Insurance Fund.

SLHC Business Activities

Synchrony Financial has also requested approval under section 10(c) of HOLA to retain control of certain non-savings association subsidiaries and thereby engage in business activities permissible for an SLHC. Section 10(c)(4) of HOLA requires the Board to consider whether the performance of a particular activity can reasonably be expected to produce benefits to the public that outweigh possible adverse effects of such activity,²⁷ taking into consideration the managerial and financial resources, including capital, of the companies involved.²⁸ As noted above, the proposal does not involve any new concentrations of resources or decrease in competition because Synchrony Financial is not acquiring any other entities as part of this proposal. Moreover, the proposal will enhance the stability of the U.S. financial system by reducing the complexity and interconnectedness of GE, GECC, and GECFI, and the proposal is expected to result in expanded products and services to customers of Synchrony Financial. In addition, as discussed above, considerations relating to Synchrony Financial's financial and managerial resources, including capital, are consistent with approval.

For the reasons discussed above, and based on the entire record, the Board finds that the proposed retention of non-savings association subsidiaries and activities by Synchrony Financial is likely to result in benefits to the public that outweigh any possible adverse effects from the transaction and is consistent with approval under the standard of section 10(c)(4) of HOLA.

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 HOLA. The Board's approval is specifically conditioned on compliance by Synchrony Financial with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the 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 later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Federal Reserve Bank of New York acting pursuant to delegated authority.

²⁷ 12 U.S.C. § 1467a(c)(4)(B)(i); *see also* 12 CFR 238.54(c).

²⁸ 12 U.S.C. § 1467a(c)(4)(B)(ii)-(iii); *see also* 12 CFR 238.54(c).

By order of the Board of Governors, effective October 14, 2015.

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

Robert deV. Frierson
Secretary of the Board

Appendix

1. Retail Finance Credit Services, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans.
2. Retail Finance International Holdings, Inc., Draper, Utah, which engages in servicing activities and community development activities and indirectly engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
3. Synchrony Holding Company, Mississauga, Ontario, Canada, which indirectly engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
4. Synchrony Financial Canada Company, Mississauga, Ontario, Canada, which indirectly engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
5. Synchrony Financial Canada, Mississauga, Ontario, Canada, which engages in activities that are usual in connection with the transaction of banking or other financial operations abroad.
6. Synchrony International Services Private Limited, Madhapur, India, which engages in servicing activities.
7. Synchrony Global Services Philippines, Inc., Muntinlupa City, Philippines, which engages in servicing activities.
8. CareCredit LLC, Costa Mesa, California, which engages in servicing activities.
9. Retail Finance Servicing, LLC, Draper, Utah, which engages in servicing activities.
10. Blue Trademark Holding, LLC, Stamford, Connecticut, which engages in servicing activities.
11. Synchrony International Resource Management, LLC, Draper, Utah, which engages in servicing activities.
12. RFS Holding, Inc., Stamford, Connecticut, which indirectly engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.
13. SBFE, LLC, Beachwood, Ohio, which engages in data processing.
14. a mobile commerce software development company, which engages in data processing.
15. SRT Holdings, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
16. RFS Holding, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.
17. PLT Holding, LLC, Stamford, Connecticut, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
18. Synchrony Receivables Trust, Newark, Delaware, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
19. Synchrony Credit Card Master Note Trust, New York, New York, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.
20. Synchrony Lending, Inc., which engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.
21. Synchrony Sales Finance Holding, LLC, which engages in extending credit and servicing loans; activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit; and private-placement services.

22. Synchrony Sales Finance Master Trust, which engages in extending credit and servicing loans and activities usual in connection with making, acquiring, brokering, or servicing loans or other extensions of credit.