



## Legal Developments: Second Quarter, 2016

### Orders Issued Under Bank Holding Company Act

#### Orders Issued Under Section 3 of the Bank Holding Company Act

Republic Bancorp, Inc.  
Louisville, Kentucky

*Order Approving the Merger of Bank Holding Companies*  
*FRB Order No. 2016-04 (May 2, 2016)*

Republic Bancorp, Inc. ("Republic"), Louisville, Kentucky, a financial holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),<sup>1</sup> has requested the Board's approval under section 3 of the BHC Act<sup>2</sup> to merge with Cornerstone Bancorp, Inc. ("Cornerstone"), and thereby indirectly acquire Cornerstone Community Bank ("Cornerstone Bank"), both of St. Petersburg, Florida. Immediately following the proposed merger, Cornerstone Bank would be merged into Republic's subsidiary bank, Republic Bank & Trust Company ("Republic Bank"), Louisville, Kentucky.<sup>3</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 68870 (November 6, 2015)).<sup>4</sup> 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.

Republic, with consolidated assets of approximately \$4.1 billion, is the 263rd largest insured depository organization in the United States. Republic currently controls approximately \$2.3 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>5</sup> Republic controls Republic Bank, which operates in Kentucky, Indiana, Ohio, Tennessee, and Florida. Republic Bank is the 208th largest insured depository institution in Florida, controlling deposits of approximately \$72.9 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> The merger of Cornerstone Bank into Republic Bank is subject to the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on February 10, 2016.

<sup>4</sup> 12 CFR 262.3(b).

<sup>5</sup> Asset data and nationwide deposit-ranking data are as of June 30, 2015, unless otherwise noted.

<sup>6</sup> State deposit data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Cornerstone, with consolidated assets of approximately \$241.2 million, is the 2,615th largest insured depository organization in the United States. Cornerstone currently controls approximately \$206 million in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Cornerstone controls Cornerstone Bank, which operates solely in Florida. Cornerstone Bank is the 138th largest insured depository institution in Florida, controlling deposits of approximately \$206 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Republic would become the 257th largest depository organization in the United States, with consolidated assets of approximately \$4.3 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Republic would control consolidated deposits of approximately \$2.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository organizations in the United States. In Florida, Republic Bank would become the 110th largest depository organization, controlling deposits of approximately \$278.8 million, which represent less than 1 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

For purposes of the BHC Act, the home state of Republic is Kentucky, and Cornerstone Bank's home state is Florida.<sup>10</sup> Republic is well capitalized and well managed under applicable law, and Republic Bank has a satisfactory Community Reinvestment Act ("CRA")<sup>11</sup> rating. Florida does not have minimum age requirements,<sup>12</sup> and Cornerstone Bank has been in existence for more than five years.

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>8</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>9</sup> 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).

<sup>10</sup> *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.

<sup>11</sup> 12 U.S.C. § 2901 *et seq.*

<sup>12</sup> Fla. Stat. Ann. § 658.2953.

On consummation of the proposed transaction, Republic 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 Florida, the only state in which Republic and Cornerstone 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 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 community to be served.<sup>13</sup>

Republic and Cornerstone have subsidiary depository institutions that compete directly in one geographic banking market, Tampa Bay Area, Florida (“Tampa Bay market”).<sup>14</sup> 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 Republic would control;<sup>15</sup> 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”);<sup>16</sup> 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 Tampa Bay market. On consummation, the Tampa Bay market would remain moderately concentrated, as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in the HHI would be small, and numerous competitors would remain in the market.<sup>17</sup>

<sup>13</sup> 12 U.S.C. § 1842(c)(1).

<sup>14</sup> The Tampa Bay market is defined as Hernando, Hillsborough, Pinellas, and Pasco counties, Florida.

<sup>15</sup> Deposit and market share data are as of June 30, 2015, 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).

<sup>16</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>17</sup> Republic operates the 44th largest depository institution in the Tampa Bay market, controlling approximately \$72.9 million in deposits, which represent 0.1 percent of market deposits. Cornerstone operates the 28th largest depository institution in the same market, controlling deposits of approximately \$206 million, which represent about 0.3 percent of market deposits. On consummation of the proposed transaction, Republic would

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 Tampa Bay 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 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 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.

Republic and Cornerstone are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as an exchange of shares for cash.<sup>18</sup> The asset quality, earnings, and liquidity of Republic Bank and Cornerstone Bank are consistent with approval, and Republic 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 Republic, Cornerstone, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Republic; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the

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become the 25th largest depository organization in the market, controlling deposits of approximately \$278.8 million, which represent 0.4 percent of market deposits. The HHI for the Tampa Bay market would increase by less than 1 point to 1,054, and 60 competitors would remain in the market.

<sup>18</sup> As proposed, Republic Acquisition Corp., a subsidiary of Republic recently formed to facilitate the transaction, would merge with and into Cornerstone with Cornerstone as the surviving entity ("Acquisition Merger"). At the effective time of the Acquisition Merger, shares of Cornerstone would be converted into the right to receive cash, based on an exchange ratio. All outstanding stock options would be canceled in exchange for cash payment equal to the spread between the option exercise prices and the exchange ratio. Immediately after the Acquisition Merger, Cornerstone would merge with and into Republic, with Republic as the surviving entity, and Cornerstone Bank would merge with and into Republic Bank, with Republic Bank as the surviving entity. Republic has the financial resources to fund these merger transactions.

organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; as well as information provided by the commenter.

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

The Board also has considered Republic's plans for implementing the proposal. Republic 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. Republic would implement its risk-management policies, procedures, and controls at the combined organization, which are considered acceptable from a supervisory perspective. In addition, Republic's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Republic plans to integrate Cornerstone's existing management and personnel in a manner that augments Republic's management.<sup>19</sup>

Based on all the facts of record, including Republic'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 Republic and Cornerstone 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.<sup>20</sup> 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,<sup>21</sup> 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.<sup>22</sup>

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 characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the appli-

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<sup>19</sup> On consummation, five individuals currently serving as senior management officials at Cornerstone or Cornerstone Bank will serve as senior management officials at Republic Bank, including Cornerstone Bank's CEO who will be retained as Republic Bank's Market President of the Florida market.

<sup>20</sup> 12 U.S.C. § 1842(c)(2).

<sup>21</sup> 12 U.S.C. § 2901(b).

<sup>22</sup> 12 U.S.C. § 2903.



cant, 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 Republic Bank and Cornerstone Bank; the fair lending and compliance records of both banks; the supervisory views of the FDIC; confidential supervisory information; information provided by Republic; 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 residential real estate loans made to African Americans and Hispanics, as compared to whites, by Republic Bank in the Louisville-Jefferson County, Kentucky-Indiana Metropolitan Statistical Area ("Louisville MSA") and the Nashville, Tennessee MSA ("Nashville MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA") for 2014.<sup>23</sup> The commenter also criticizes the rate at which Republic Bank denied applications by African Americans, compared to that for whites, for home purchase and home improvement loans in the Louisville MSA, as reported under HMDA for 2014. In addition, the commenter expresses general concerns regarding Republic Bank's Build Card program, a recently launched credit card that the commenter describes as a subprime credit card. The commenter expresses concerns over the annualized interest rate that the bank charges cardholders. The commenter also generally contends that Republic Bank's past tax refund anticipation loan product is an example of problems with Republic Bank's lending record.<sup>24</sup> The FDIC considered the same comments in connection with its review of the underlying bank merger application and found the CRA record and convenience and needs factor consistent with approval of the proposal on February 10, 2016.<sup>25</sup>

#### *Businesses of the Involved Institutions and Response to Comments*

Republic Bank is a full-service bank, offering a broad range of financial products and services to consumers and businesses. Through its branch network in Kentucky, Indiana, Florida, Ohio, and Tennessee, it offers a variety of traditional banking products to consumers, including mortgage loan products, consumer loans, credit cards, and checking and savings products. Republic Bank's business-focused products and services include community development loans, Small Business Administration loans, commercial real estate and development loans, and equipment finance products.

<sup>23</sup> The commenter's concerns focus on the number of home purchase loans, home refinance loans, and home improvement loans that Republic Bank offered to African Americans and Hispanics compared to whites in the Louisville MSA, as well as the number of home purchase loans that Republic Bank offered to African Americans and Hispanics compared to whites in the Nashville MSA.

<sup>24</sup> Through partnerships with tax preparers and tax software preparation companies, Republic Bank offered tax refund anticipation loans whereby the bank extended tax refund advances to taxpayers shortly after they filed their tax returns. The advances were secured by the taxpayers' refunds. In response to safety and soundness and consumer compliance concerns raised by the FDIC regarding this tax refund anticipation loan product offered by Republic Bank, the product was discontinued in 2012 pursuant to an agreement between the FDIC and Republic Bank. Republic Bank recently launched a new product that offers advances of taxpayers' refunds; however, as discussed in more detail below, Republic represents that the new product has significantly different terms and protections that address the FDIC's concerns regarding the prior product.

<sup>25</sup> Letter from M. Anthony Lowe, Regional Director of FDIC Chicago Regional Office, to Cynthia W. Young, Wyatt, Tarrant & Combs, LLP (February 10, 2016).

Cornerstone Bank is a full-service bank that offers a more limited range of retail and commercial banking products and services through four branches in Pinellas County, Florida. Its products and services include home equity loans, auto loans, a variety of checking and savings products, construction and land acquisition development loans, equipment financing, and loans for business acquisitions and expansions.

Republic denies that the HMDA data presented by the commenter reflect discriminatory or unfair lending practices by Republic Bank in the Louisville or Nashville MSAs. Republic represents that its denial rates to African Americans in the Louisville MSA reflect judgments based on credit history, loan-to-value ratios, debt-to-income ratios, and other nondiscriminatory factors. Republic also represents that it continuously deploys strategies to increase its lending to minorities in the Louisville MSA, as well as in its other markets. Republic represents that these efforts have resulted in its applications from African Americans increasing by 45 percent between the 2014 and 2015 calendar years and in its originations to African Americans increasing by 100 percent in the Louisville MSA during the same period.

In response to allegations about low levels of lending to African Americans in the Nashville MSA, Republic explains that the bank entered the Nashville market in 2012 after acquiring a failed bank with a single branch that was primarily engaged in commercial lending and had no minority applicants. Since the acquisition, Republic represents that it has added a second branch in the market, conducted significant outreach to community organizations, and engaged in marketing efforts in areas with high minority concentrations. Republic represents that these efforts have resulted in recent improvements in its consumer lending footprint in the market, including increases in applications by and originations to minority applicants.

Republic asserts that it has policies and procedures to ensure compliance with fair lending laws and to monitor fair lending risk, including annual fair lending risk assessments, and HMDA and fair lending monitoring conducted by dedicated staff as well as an outside firm to gain additional insight into applicable risks.

Republic argues that its Build Card program is an affordable alternative to other short-term financing options, such as payday loans. Republic contends that its Build Card is appropriately priced for risk, provides customers with transparency regarding the total cost of credit, does not have hidden fees or add-on products, and has simple pricing that is easy for consumers to understand.

Republic acknowledges that it discontinued a tax refund anticipation loan product in 2012 and launched a new tax refund product in January 2016 under the brand name Easy Advance. However, Republic represents that the new product was designed with terms and features that address supervisory concerns with the prior product, and that the bank reviewed the product with the FDIC prior to launch. Republic represents that, unlike the prior product, no fee or interest is charged to the customer for an Easy Advance loan; rather, for each origination a flat fee is paid by the bank's tax preparation partners, who are contractually prohibited from passing the cost of the fee to the customer.<sup>26</sup> Further, Republic represents that its Easy Advance loans are capped at a much lower amount than the prior product, and that there is no recourse against the customer if the tax refund is insufficient to repay the loan. Republic also represents that it requires each tax preparer that offers the Easy Advance product to undergo training for compliance with relevant

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<sup>26</sup> Republic represents that its tax preparation partners offer the Easy Advance product as a marketing tool for attracting customers to their tax preparation services. Republic asserts that it closely monitors its partners for compliance with the prohibition against passing the origination fees to customers.

laws, regulations, and program terms, and that it monitors its partners through on-site reviews and audits.

### *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, information provided by public commenters, and information and views provided by the appropriate federal supervisors.<sup>27</sup>

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.<sup>28</sup> 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 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 (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;<sup>29</sup> (4) the institution's community development lending, including the number and amount of community development 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.

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.<sup>30</sup> Consequently, HMDA data disparities must be evaluated in the context of other informa-

<sup>27</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

<sup>28</sup> 12 U.S.C. § 2906.

<sup>29</sup> 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).

<sup>30</sup> 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.



tion 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 Republic Bank and Cornerstone Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Republic, and the public comments received on the proposal.

#### *CRA Performance of Republic Bank*

Republic Bank was assigned an overall rating of “Satisfactory” at its most recent CRA performance evaluation by the FDIC, as of June 23, 2014 (“Republic Bank Evaluation”).<sup>31</sup> The bank received “High Satisfactory” ratings for both the Lending Test and the Investment Test and an “Outstanding” rating for the Service Test.<sup>32</sup>

Examiners found that Republic Bank’s overall lending levels reflected good responsiveness to credit needs in its assessment areas. According to examiners, the bank used innovative and flexible lending practices in order to serve assessment area credit needs. Examiners found that a substantial majority of the bank’s loans were made to borrowers within its assessment areas. Overall, the examiners also found that geographic distribution of the bank’s loans reflected adequate penetration throughout its assessment areas.<sup>33</sup> Exceptionally, in the Nashville MSA, examiners found the geographic distribution of the bank’s loans to be poor; however, examiners noted that the bank did not enter this assessment area until 2012 and operated only two branches in the assessment area. Further, examiners found that, overall, the bank exhibited adequate responsiveness to the credit needs of the assessment area.

Examiners found that the distribution of the bank’s borrowers reflected adequate penetration among customers of different income levels and businesses of different sizes. Examiners noted that Republic Bank exhibited an adequate record of serving the credit needs of the most economically disadvantaged areas of its assessment areas, low-income individuals, and very small businesses. For example, examiners found that the bank made a relatively high level of community development loans within its assessment areas. Republic Bank’s community development lending efforts primarily focused on lending to community development organizations that provide essential services to LMI individuals and revitalizing and stabilizing economically distressed geographies within the bank’s assessment areas.

Examiners found that Republic Bank made a significant level of qualified community development investments and grants within its assessment areas, including the Louisville MSA. The bank was occasionally found to be a leader in providing investments not routinely provided by private investors. Examiners found that the types of qualified investments held by Republic Bank demonstrated a commitment to meeting community needs. These investments included low-income housing tax credits and equity investments in community development housing and development organizations within the bank’s assessment areas.

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<sup>31</sup> The Republic Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed loans reported, pursuant to HMDA and CRA data collection requirements (geographic distribution and borrower distribution) in 2012 and 2013. The evaluation period for community development lending, investments, and services was September 12, 2011, through June 23, 2014.

<sup>32</sup> The Republic Bank Evaluation included a full-scope evaluation of the Louisville MSA; Lexington-Fayette, Kentucky MSA; and Nashville MSA.

<sup>33</sup> Examiners also concluded that geographic distribution of the bank’s home purchase lending in LMI census tracts was adequate, and noted strong competition in the Louisville MSA for home purchase loans and other residential and small business loans.

Examiners found Republic Bank's delivery systems to be accessible to all portions of the bank's assessment areas. The hours and services offered at Republic Bank's branch locations were found to be comparable, regardless of the income level of the census tract. Examiners found that the bank was a leader in providing community development services and technical assistance to organizations that provide community development services, particularly in the Louisville MSA. In particular, examiners noted that the bank is a leader in supporting programs that connect individuals who lack adequate access to financial services with financial institutions that provide free or low-cost products. Examiners also noted that the bank is a leader in supporting programs that promote financial literacy within its assessment areas.

#### *Republic Bank's Efforts Since the 2014 CRA Evaluation*

Republic represents that, since the Republic Bank Evaluation, Republic Bank has remained active in marketing a wide selection of products and services specifically designed for LMI borrowers and has made a number of community development loans to support affordable housing and small businesses in its assessment areas. Republic represents that the bank has engaged in various outreach efforts and community service opportunities with organizations that serve LMI persons and communities, including organizations that focus on financial education initiatives, neighborhood rehabilitation efforts, and affordable housing. In addition, Republic represents that the bank has routinely advertised and marketed products and services in census tracts with high minority populations within its assessment areas.

#### *CRA Performance of Cornerstone Bank*

Cornerstone Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of June 1, 2015 ("Cornerstone Bank Evaluation").<sup>34</sup> Examiners concluded that the bank offers a variety of business and consumer credit products that meet the needs of the communities that it serves. Examiners found that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and the credit needs of its assessment area. Examiners also noted that a substantial majority of the bank's small business loans were originated within its assessment area. Further, examiners found that the geographic distribution of the bank's loans reflected a reasonable dispersion throughout its assessment area, and that the bank's distribution of loans to borrowers reflected excellent penetration among businesses of different sizes.

#### *Views of Other Regulators, and FDIC Approval of the Bank Merger*

The Board has consulted with the FDIC, the primary federal supervisor of Republic Bank, regarding the FDIC's review of the proposed merger of Republic Bank and Cornerstone Bank. The FDIC conducted a review of the same comments that were submitted to the Board, taking into consideration the HMDA data cited by the commenter; Republic Bank's CRA, consumer compliance, and fair lending records; and the bank's outreach to African Americans and Hispanics and in LMI communities.<sup>35</sup> The FDIC also conducted a recent consumer compliance examination and fair lending review of Republic Bank. The Board reviewed the examination report and consulted with the FDIC regarding Republic

<sup>34</sup> The Cornerstone Bank Evaluation was conducted using Small Institution CRA Examination Procedures. Examiners reviewed the bank's lending activity from June 22, 2009, through June 1, 2015. The Cornerstone Bank Evaluation reviewed the bank's Pinellas County assessment area.

<sup>35</sup> The FDIC also considered the comments regarding Republic Bank's Build Card and former tax refund product. Further, as noted, Republic Bank informed the FDIC of a new tax refund loan product prior to its launch. The FDIC will continue to monitor Republic Bank's product offerings as part of the ongoing supervisory process.

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. Republic Bank intends to implement those policies and procedures at the combined organization following consummation of the transaction.

After a full review of the proposal, including consideration of the public comments, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal. The FDIC did not impose any special conditions related to fair lending or 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. Republic represents that upon consummation of the proposal, existing customers of Cornerstone would have access to a complement of products and services that are more expansive than those currently available to Cornerstone customers, including a wider variety of checking and savings products, enhanced small business accounts, treasury management services, credit cards, home mortgage loans, and enhanced internet and mobile banking platforms. Republic also represents that no products would be discontinued as a result of the proposal. Moreover, Republic 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, confidential supervisory information, information provided by Republic, 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 proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."<sup>36</sup>

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.<sup>37</sup> These categories are not exhaustive, and additional categories could inform the Board's deci-

<sup>36</sup> Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

<sup>37</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

sion. 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.<sup>38</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Republic would have approximately \$4.3 billion in consolidated assets and, by any of a number of alternative measures of firm size, Republic 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.

## Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.<sup>39</sup> 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 Republic 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 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 St. Louis, acting under delegated authority.

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

<sup>39</sup> The commenter 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 commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenter's request did not identify disputed issues of fact material to the Board's decision and that would be clarified by a public meeting. In addition, the request did not demonstrate why written comments do not present the commenter's 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 request for a public hearing or meeting on the proposal is denied.

By order of the Board of Governors, effective May 2, 2016.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*



## BNC Bancorp High Point, North Carolina

*Order Approving the Merger of Bank Holding Companies FRB Order No. 2016-0 (June 2, 2016)*

BNC Bancorp (“BNC”), High Point, North Carolina, a bank holding company, has requested the Board’s approval under section 3 of the Bank Holding Company Act of 1956, as amended (“BHC Act”),<sup>1</sup> to acquire Southcoast Financial Corporation (“Southcoast”), a bank holding company, and thereby indirectly acquire its subsidiary state-chartered bank, Southcoast Community Bank (“Southcoast Bank”), both of Mount Pleasant, South Carolina. Following the proposed acquisition, Southcoast Bank would be merged into BNC’s only subsidiary state-chartered bank, Bank of North Carolina (“BNC Bank”), Thomasville, North Carolina.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 63224 (October 19, 2015)).<sup>3</sup> 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.

BNC, with consolidated assets of approximately \$5.7 billion, is the 225th largest insured depository organization in the United States, controlling approximately \$4.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>4</sup> BNC controls BNC Bank, which operates in North Carolina, South Carolina, and Virginia. BNC is the 17th largest insured depository organization in South Carolina, controlling approximately \$542 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>5</sup>

Southcoast, with consolidated assets of approximately \$503 million, is the 1,481st largest insured depository organization in the United States, controlling approximately \$366 million in deposits, which represent less than 1 percent of nationwide deposits. Southcoast controls Southcoast Bank, which operates only in South Carolina. Southcoast is the 25th largest insured depository organization in South Carolina, controlling \$366 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, BNC would become the 219th largest depository organization in the United States, with consolidated assets of approximately \$6.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. BNC would control total deposits of approximately \$4.5 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In South Carolina, BNC would become the 11th largest depository organization, controlling deposits of approximately \$908 million, which repre-

<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> The merger of Southcoast Bank into BNC Bank is subject to the approval of the Federal Deposit Insurance Corporation (“FDIC”) pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”). 12 U.S.C. § 1828(c). The FDIC approved the bank merger on April 29, 2016.

<sup>3</sup> 12 CFR 262.3(b).

<sup>4</sup> Nationwide deposit-ranking data are as of June 30, 2015, and asset data are as of December 31, 2015, unless otherwise noted. The deposits for BNC have been adjusted to account for its acquisition of Valley Financial Corporation, which was consummated on July 1, 2015.

<sup>5</sup> State deposit data are as of June 30, 2015, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

sent approximately 1 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 in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.<sup>6</sup> 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.<sup>7</sup> In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would 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.<sup>8</sup>

For purposes of the BHC Act, BNC's home state is North Carolina, and Southcoast's home state is South Carolina.<sup>9</sup> BNC is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act ("CRA") rating.<sup>10</sup> South Carolina has a five-year minimum age requirement,<sup>11</sup> and Southcoast Bank has been in existence for more than five years.

On consummation of the proposed transaction, BNC 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 1 percent of the total amount of deposits of insured depository institutions in Southcoast's home state of South Carolina, the only state in which BNC and Southcoast 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 also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by

<sup>6</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>7</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>8</sup> 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).

<sup>9</sup> 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.

<sup>10</sup> 12 U.S.C. § 2901 *et seq.* There are no state community reinvestment laws applicable to this case.

<sup>11</sup> See S.C. Code Ann. § 34-25-50(c) (imposing a five-year age requirement for interstate acquisitions of South Carolina banks).

the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>12</sup>

BNC and Southcoast have subsidiary depository institutions that compete directly in the Charleston, South Carolina banking market (the “Charleston banking market”).<sup>13</sup> The Board has considered the competitive effects of the proposal in this 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 BNC would control;<sup>14</sup> 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”);<sup>15</sup> 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 Charleston banking market. On consummation of the proposal, the Charleston 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.<sup>16</sup>

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

<sup>12</sup> 12 U.S.C. § 1842(c)(1).

<sup>13</sup> The Charleston banking market includes the Charleston Rannally Metro Area (“RMA”); the non-RMA portions of the counties of Charleston and Berkeley, South Carolina; and the southeastern portion of Colleton County, South Carolina, located east of the South Edisto River on Edisto Island.

<sup>14</sup> Deposit and market share data are as of June 30, 2015, 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).

<sup>15</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

<sup>16</sup> BNC operates the 12th largest depository institution in the Charleston banking market, controlling approximately \$250 million in deposits, which represent approximately 2.3 percent of market deposits. Southcoast operates the 8th largest depository organization in the same market, controlling deposits of approximately \$366 million, which represent 3.3 percent of market deposits. On consummation of the proposed transaction, BNC would become the 7th largest depository institution in the market, controlling deposits of approximately \$616 million, which represent approximately 5.6 percent of market deposits. The HHI for the Charleston banking market would increase by 15 points to 1224, and 32 other competitors would remain in the market.

### **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 on the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information on the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance, 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 fully 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.

BNC and BNC 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 share exchange, with a subsequent merger of the subsidiary depository institutions.<sup>17</sup> The asset quality, earnings, and liquidity of BNC Bank and Southcoast Bank are consistent with approval, and BNC 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 BNC, Southcoast, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by BNC; the Board's supervisory experiences with BNC and Southcoast 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.

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

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

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<sup>17</sup> As part of the proposed transaction, each share of Southcoast common stock would be converted into a right to receive BNC common stock based on a certain exchange ratio.

Based on all the facts of record, including BNC'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 BNC and Southcoast 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. 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.<sup>18</sup> 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,<sup>19</sup> 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.<sup>20</sup>

In addition, the Board considers the banks' overall compliance record and 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, 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 BNC Bank and Southcoast Bank, the fair lending compliance records of both banks, supervisory views of the FDIC, confidential supervisory information, information provided by BNC, 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 made to African Americans and Hispanics, as compared to whites, by BNC Bank in the Charleston-North Charleston-Summerville, South Carolina ("Charleston") Metropolitan Statistical Area ("MSA"), and the number of refinance loans made to African Americans, as compared to whites, by BNC Bank in the Charleston MSA, as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")<sup>21</sup> for 2014. The commenter also objected to the proposal on the basis of alleged disparities in the number of conventional

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<sup>18</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

<sup>19</sup> 12 U.S.C. § 2901(b).

<sup>20</sup> 12 U.S.C. § 2903.

<sup>21</sup> 12 U.S.C. § 2801 *et seq.*



home purchase loans and refinance loans made to African Americans, as compared to whites, by Southcoast Bank in the Charleston MSA, as reflected in HMDA data for 2014. With respect to the Greenville Mauldin-Easley, South Carolina (“Greenville”) MSA, the commenter alleged that there were disparities in the number of conventional home purchase loans and refinance loans made to African Americans and Hispanics, as compared to whites, by BNC Bank, as reflected in HMDA data reported for 2013.

*Businesses of the Involved Institutions and Response to Comments*

BNC Bank is a state-chartered, commercial bank, headquartered in Thomasville, North Carolina. It offers a full range of banking and financial services that include deposit accounts; commercial, real estate, and consumer loan products; mortgage brokerage services; and a full line of commercial and consumer insurance and investment products and services. The bank’s main loan focus is small and medium-sized businesses.

Southcoast Bank is a commercial bank, headquartered in Mount Pleasant, South Carolina. It offers a full array of consumer and commercial deposit products, as well as commercial, real estate, and consumer loan products. The bank’s primary focus is residential lending followed by commercial lending.

BNC asserts that BNC Bank’s lending record to minorities in the Charleston MSA, as reflected in HMDA data, is attributable to its recent entry in the MSA in mid-2012. BNC further asserts that although the bank did not originate many mortgage applications to minorities in the Charleston MSA, the bank’s approval rates for minorities were very favorable. BNC represents that for conventional home purchase applications, minority applicants were approved more often than white applicants and that since its entry into the Charleston MSA, BNC Bank has made efforts to increase its lending to African Americans and Hispanics, as reflected in HMDA data for 2014. BNC expects that the acquisition of Southcoast and Southcoast Bank will significantly expand BNC Bank’s Charleston branch network and provide the bank with greater ability to serve the communities within the Charleston MSA. BNC also maintains that Southcoast Bank’s approval percentages for applications received from minority applicants are comparable to or better than its approval percentage for white applicants in the Charleston MSA.

BNC contends that BNC Bank’s lending record to minorities in the Greenville MSA, as reflected in HMDA data for 2013, is also related to the bank’s recent entry in the market in late 2011. BNC asserts that the bank is making progress in providing greater banking services to those in the community by expanding its banking network in the Greenville MSA through branch acquisitions and employing additional mortgage loan originators. BNC further asserts that, although the bank did not originate many mortgage applications for minorities, including African Americans and Hispanics, in the Greenville MSA, its approval rates for minorities were very favorable. BNC represents that in 2014, all home purchase and refinance applications for minority applicants were approved. BNC further represents that BNC Bank is committed to continually improving its performance in the Greenville and Charleston MSAs and to meeting the needs of all members of the communities. BNC notes that the commenter filed similar comments with the FDIC on an application for an unrelated acquisition, which was approved on the condition that BNC Bank develop and submit a supplement to its existing compliance plan that would strengthen the bank’s fair lending compliance program. BNC asserts that the supplement to BNC Bank’s compliance plan, which has been approved by the FDIC and implemented by the bank, adequately addresses the concerns raised by the commenter on this proposal.

*Records of Performance under the CRA*

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 record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions, as well as information and views provided by the appropriate federal supervisors.<sup>22</sup> In this case, the Board considered the supervisory views of and information provided by the FDIC.

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.<sup>23</sup> 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 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 (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 made to low-, moderate-, middle-, and upper-income individuals;<sup>24</sup> (4) the institution's community development lending, including the number and amount of community development 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.

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.<sup>25</sup>

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<sup>22</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642 at 11665 (2010).

<sup>23</sup> 12 U.S.C. § 2906.

<sup>24</sup> Examiners also consider the number and amount of small business and small farm loans made 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).

<sup>25</sup> Other data relevant to credit decisions could include credit history problems, 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.

Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

### *CRA Performance of BNC Bank*

BNC Bank was assigned an overall “Satisfactory” rating by the FDIC at its most recent CRA performance evaluation (“BNC Bank Evaluation”), as of April 28, 2014.<sup>26</sup> BNC Bank received a “High Satisfactory” rating for both the Lending Test and the Service Test, and a “Low Satisfactory” rating for the Investment Test.<sup>27</sup> The Board has consulted with the FDIC regarding the BNC Bank Evaluation.

Examiners found that the bank’s overall lending activity reflected good responsiveness to the assessment areas’ credit needs. Examiners noted that the bank originated a significant majority of home mortgage loans and small business loans within its combined assessment areas and that the geographic distribution of the loans reflected good penetration throughout the assessment areas. Examiners also noted that the bank originated a relatively high level of community development loans in its assessment areas and made good use of flexible lending practices in order to serve the assessment areas’ credit needs. BNC Bank is qualified as a U.S. Small Business Administration (“SBA”) lender, and examiners highlighted that the bank was one of the most active SBA lenders in North Carolina over the evaluation period and that it ranked among the top ten of all lenders, with the banks ranked ahead of BNC Bank having larger asset sizes and national or regional presences. The bank also offered flexible mortgage loan products through the Federal Housing Administration, the SBA, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the North Carolina Housing Finance Agency.

Examiners found that BNC Bank had an adequate level of qualified community development investments and grants and that it exhibited adequate responsiveness to the credit needs of the assessment areas. Examiners noted that the bank’s level of qualified equity investments and charitable donations had significantly improved from the last examination. Examiners highlighted that nearly all of the bank’s qualified CRA grants and donations were made directly to community development-related organizations located within the bank’s assessment areas. The remainder of the bank’s CRA grants and donations were made to qualified individuals and community development-related organizations in the broader regional area that included the bank’s assessment areas. Examiners noted that the grants and donations provided much needed financial assistance to organizations with the primary purpose of economic development, community revitalization, affordable housing, financial education, scholarships for low- and moderate-income students, and basic human services to low- and moderate-income individuals.

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<sup>26</sup> The BNC Bank Evaluation was conducted using the CRA Large Bank Examination Procedures and covered the time period from June 27, 2011, to April 28, 2014. For the Lending Test, the evaluation included a review of loans reportable under HMDA and CRA data collection requirements for 2012 and 2013, focusing on home purchase and home refinance loans only. For the Investment and Service Tests, the evaluation also covered the period from June 27, 2011, to April 28, 2014. The Investment Test also included investments prior to June 27, 2011, that were still outstanding as of April 28, 2014.

<sup>27</sup> During the BNC Bank Evaluation, examiners reviewed eight assessment areas of the bank in North Carolina and four assessment areas of the bank in South Carolina. Examiners placed greater weight on the bank’s performance in North Carolina in assigning the overall CRA rating, because 35 of the bank’s 45 branches were located in North Carolina, and over 86 percent of the bank’s lending occurred within the state. Three of the bank’s eight assessment areas in North Carolina received full-scope reviews. Examiners assigned the most weight to the Charlotte-Gastonia-Rock Hill MSA assessment area in North Carolina and to the Myrtle Beach-North Myrtle Beach-Conway MSA assessment area in South Carolina, based on the significant volume of lending, deposits, and number of branches in those areas, to arrive at the individual state ratings. Examiners also considered the timing of BNC Bank’s entry into the Charleston MSA in June 2012, the Burlington, NC MSA in 2013, and the Durham-Chapel Hill, NC MSA in September 2012, along with other extenuating factors in performing limited-scope reviews of these assessment areas.

Examiners noted that the bank's overall "High Satisfactory" rating under the Service Test was based primarily on the community development services, but examiners also considered the bank's retail account services. Examiners highlighted that BNC Bank's management, directorate, and other personnel provided a relatively high level of community development services in the bank's assessment areas. Examiners also noted that the bank offered a full array of financial services throughout its assessment areas to ensure that the needs of the communities were met through several delivery methods and that the bank's delivery systems were reasonably accessible to essentially all portions of the institution's assessment areas. In addition, examiners noted that the quantity, quality, and accessibility of service-delivery systems to all segments of its assessment areas supported a "High Satisfactory" rating.

#### *BNC Bank's Efforts Since the BNC Bank Evaluation*

BNC asserts that, since the BNC Bank Evaluation, BNC Bank has initiated a number of efforts to enhance its support of all the communities in which the bank operates. For example, BNC represents that BNC Bank has created a new deposit account targeted to individuals working to establish or reestablish a banking relationship with the institution. BNC believes that this product will be particularly beneficial or attractive to younger individuals and to the unbanked or underbanked population in the communities the bank serves.

BNC represents that BNC Bank is developing initiatives and programs focused on lending, investment, and service activities in its communities, with emphasis on developing programs for lower- to moderate- income residents. BNC further represents that the bank has formed a Fair Banking Team responsible for compliance with fair lending, CRA, HMDA, and Unfair, Deceptive, Abusive Acts and Practices laws. Additionally, the bank has formed a CRA Committee, which consists of a number of senior officers of the bank, including the director of mortgage banking, chief credit officer, and the bank's CRA officer. BNC also represents that the bank has created a new director position that will be directly responsible for helping to increase interaction with the communities the bank serves.

#### *CRA Performance of Southcoast Bank*

Southcoast Bank was assigned an overall "Satisfactory" rating by the FDIC at its most recent CRA performance evaluation ("Southcoast Bank Evaluation"), as of January 3, 2014.<sup>28</sup> Southcoast Bank received a "Satisfactory" rating for both the Lending Test<sup>29</sup> and the Community Development Test.

Examiners noted that Southcoast Bank's average net loan-to-deposit ratio reflected an excellent responsiveness to area credit needs, considering the institution's size, financial

<sup>28</sup> The Southcoast Bank Evaluation was conducted by the FDIC using the Intermediate Small Bank CRA Examination Procedures, which include the Lending and Community Development Tests. Under the Lending Test, examiners evaluated the bank's home mortgage loans from 2011 through September 30, 2013, and its small business loans between October 25, 2012, and October 24, 2013. As part of the Community Development Test, qualified community development loans, investments, and services that were originated, invested, or participated in, respectively, from September 8, 2010, to January 3, 2014, were reviewed. Examiners reviewed all of the Charleston MSA.

<sup>29</sup> 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 for 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).

condition, and assessment area credit needs. Examiners found that the bank's lending levels reflected that a substantial majority of its loans, in terms of number and dollar amount, were originated inside the assessment area. Examiners also found that the bank's geographic distribution of borrowers reflected an excellent dispersion for home mortgage loans and a reasonable penetration for small businesses, given the demographics of the assessment area.

Examiners noted that Southcoast Bank demonstrated an adequate responsiveness to the community development needs of the bank's assessment area through community development loans, investments, and services.

#### *Views of FDIC*

The Board has consulted with the FDIC, the primary supervisor of both BNC Bank and Southcoast Bank, in connection with the FDIC's review of the bank merger underlying this proposal. Although the FDIC did not directly receive any comments on the bank merger application, it was provided with the comments received by the Board that opposed the transaction on the basis of the lending records of Southcoast Bank and BNC Bank in the Charleston and Greenville MSAs. The FDIC considered the comments in connection with its review of the bank merger application.

In its review, the FDIC considered both institutions' records of compliance with respect to consumer protection laws and regulations; the institutions' performance under the CRA; the lending records of both institutions in the Charleston MSA; HMDA data for the institutions; and the lending record of BNC Bank both in the Greenville MSA and on an enterprise-wide basis.

The FDIC indicated that BNC Bank currently operates under a compliance plan that has been approved by BNC Bank's board of directors and includes provisions for managing its fair lending risk, and an FDIC-approved supplement to the plan that includes provisions that ensure that the bank will continue its efforts to implement strategies to further strengthen its fair lending compliance program. The FDIC also indicated that the supplement to the compliance plan includes specific provisions pertaining to the bank's enterprise-wide branching strategies and marketing plans that consider available aggregate data, demographics, and safe and sound lending considerations. The FDIC-approved supplement requires periodic reviews of the bank's lending distributions and marketing efforts in order to measure and assess the bank's progress under the compliance plan. According to the FDIC, the supplement to the compliance plan requires the bank to provide quarterly written reports to the bank's board of directors and the FDIC.

After a full review of the proposal for BNC Bank to merge with Southcoast Bank, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal applying the same standards as must be reviewed by the Board under the BHC Act. In addition, the FDIC has indicated no-objection to the proposal before the Board. The Board expects BNC to ensure that BNC Bank complies with its compliance plan and the supplement approved by the FDIC.

#### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of a proposal on the convenience and needs of the communities to be served. BNC represents that the proposal would provide customers of the combined organization with access to additional or expanded services, due to an expanded network of branch locations in the Charleston MSA. In addition, BNC expects that the merger would enable it to compete more effectively with other finan-



cial institutions in its market areas and to improve its ability to meet the needs of its customers and the communities in its market areas. BNC also represents that no significant reductions in products or services would be expected as a result of the proposal. Moreover, BNC has also indicated that BNC Bank staff is currently developing initiatives and programs focused on lending, investment, and service activities in its communities, with an emphasis on developing programs for LMI individuals and communities, and that these programs would be beneficial to BNC Bank customers and former Southcoast Bank customers 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 BNC, 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 proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, BNC would have approximately \$6.2 billion in consolidated assets and, by any of a number of alternative measures of firm size, BNC would not be likely to pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in assets, or that results in a firm with less than \$25 billion in total consolidated assets, will not pose significant risks to the

<sup>30</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601 (2010), codified at 12 U.S.C. § 1842(c)(7).

<sup>31</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>32</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).

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.

### **Conclusion**

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.<sup>33</sup> 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 BNC with all the conditions imposed in this Order, including receipt of all required regulatory approvals, and on the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective June 2, 2016.

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

Robert deV. Frierson  
*Secretary of the Board*

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<sup>33</sup> 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. 12CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, the commenter has 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 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.

Ohio Valley Banc Corp.  
Gallipolis, Ohio

*Order Approving the Merger of Bank Holding Companies, the Merger of Banks, and the Establishment of Branches*  
*FRB Order No. 2016-10 (June 28, 2016)*

Ohio Valley Banc Corp. (“OVBC”), Gallipolis, Ohio, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Milton Bancorp, Inc. (“Milton Bancorp”), and thereby indirectly acquire its subsidiary bank, The Milton Banking Company (“Milton Bank”), both of Wellston, Ohio.

In addition, OVBC’s subsidiary state member bank, The Ohio Valley Bank Company (“Ohio Valley Bank”), also of Gallipolis, has requested the Board’s approval to merge with Milton Bank pursuant to section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”), with Ohio Valley Bank as the surviving entity.<sup>3</sup> Ohio Valley 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 Milton Bank.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 26,231 (2016)).<sup>5</sup> 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.

OVBC, with total consolidated assets of approximately \$795.6 million, is the 910th largest depository organization in the United States, controlling deposits of approximately \$663.3 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>6</sup> OVBC controls Ohio Valley Bank, which operates in Ohio and West Virginia. Ohio Valley Bank is the 38th largest insured depository organization in Ohio, controlling deposits of approximately \$533.4 million, which represent less than 1 percent of the total deposits in insured depository institutions in that state.<sup>7</sup>

Milton Bancorp, with consolidated assets of approximately \$142.5 million, is the 3,768th largest depository organization in the United States. Milton Bancorp controls Milton Bank, a nonmember bank that operates only in Ohio. Milton Bank is the 112th largest insured depository organization in Ohio, controlling approximately \$120.6 million in deposits, which represent less than 1 percent of the total deposits held by insured depository institutions in Ohio.

On consummation of this proposal, OVBC would become the 760th largest depository organization in the United States, with consolidated assets of approximately

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> 12 U.S.C. § 1828(c).

<sup>4</sup> 12 U.S.C. § 321. These locations are listed in Appendix A.

<sup>5</sup> 12 CFR 262.3(b).

<sup>6</sup> Nationwide deposit, asset, and ranking data are as of December 31, 2015. In this context, insured depository institutions include commercial banks, savings banks, savings associations, and non-deposit trust companies.

<sup>7</sup> State deposit, market share, and ranking data are as of June 30, 2015.

\$938.1 million, which represent less than 1 percent of the total assets of insured depository institutions in the United States. OVBC would control deposits of approximately \$789.4 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Ohio, OVBC would become the 32nd largest depository institution, controlling deposits of approximately \$654.0 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 any 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.<sup>8</sup>

OVBC and Milton Bancorp have subsidiary depository institutions that compete directly in the Jackson, Ohio, banking market (the “Jackson market”).<sup>9</sup> 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 OVBC would control;<sup>10</sup> 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”);<sup>11</sup> and other characteristics of the market.

Using the initial competitive screening data, in the Jackson market, OVBC is the sixth largest depository organization, controlling deposits of approximately \$44.3 million, which represent approximately 7.4 percent of market deposits. Milton Bancorp is the third largest depository organization in the market, controlling deposits of approximately \$92.7 million, which represent approximately 15.4 percent of market deposits. On consummation of the proposal, the combined entity would be the third largest depository organization in the Jackson market, controlling deposits of approximately \$137.1 million, which would represent approximately 22.8 percent of market deposits. The HHI in the market would increase by 227 points, from 2094 to 2321.

The Board has considered whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would not have a significantly adverse effect on

<sup>8</sup> 12 U.S.C. §§ 1842(c)(1) and 1828(c)(5).

<sup>9</sup> The Jackson market is defined as Jackson and Vinton counties in Ohio.

<sup>10</sup> Deposit and market share data are as of June 30, 2015, and are based on data reported by insured depository institutions in the Federal Deposit Insurance Corporation’s Summary of Deposits data.

<sup>11</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

competition in the Jackson market.<sup>12</sup> Factors indicate that the increase in concentration in the Jackson market, as measured by the above HHI and market share, overstates the potential competitive effects of the proposal in the market. In particular, a community credit union exerts a competitive influence in the Jackson market. The institution offers a wide range of consumer banking products, operates street-level branches, and has broad membership criteria that include almost all of the residents in the relevant banking market.<sup>13</sup> The Board finds that these circumstances warrant including the deposits of this credit union at a 50-percent weight in estimating market influence. This weighting takes into account the limited lending done by this credit union to small businesses relative to commercial banks' lending levels.

This adjustment suggests that the resulting market concentration of the proposed transaction in the Jackson market is less significant than would appear from the initial competitive screening data, which focused on commercial bank competitors. In particular, adjusting to reflect competition by the credit union, the market concentration level in the Jackson market as measured by the HHI would increase by 207, from a level of 1932 to 2139, and the market share of OVBC resulting from the transaction would be 21.8 percent. After consummation of the proposal, six depository institutions would remain in the Jackson market, including two depository institutions with higher market share than OVBC. One depository institution would control 29.7 percent of deposits, while another would control over 24 percent of market deposits. The proposed transaction would create a competitor that, while still smaller than the two largest competitors in the market, is better situated to compete in the market with these larger competitors.<sup>14</sup>

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 would not have a significantly adverse effect on competition or on the concentration of resources in the Jackson 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

<sup>12</sup> The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of, concentration in a banking market. See *Nationsbank Corp.*, 84 *Federal Reserve Bulletin* 129 (1998).

<sup>13</sup> The Board previously has considered competition from certain active credit unions with these features as a mitigating factor. See, e.g., *Chemical Financial Corporation*, FRB Order No. 2015-13 (April 20, 2015); *Mitsubishi UFJ Financial Group, Inc.*, FRB Order No. 2012-12 (November 14, 2012); *Old National Bancorp.*, FRB Order No. 2012-9 (August 30, 2012); *United Bankshares, Inc.* (order dated June 20, 2011), 97 *Federal Reserve Bulletin* 19 (2nd Quar. 2011); *The PNC Financial Services Group, Inc.*, 94 *Federal Reserve Bulletin* C38 (2008); *The PNC Financial Services Group, Inc.*, 93 *Federal Reserve Bulletin* C65 (2007); *Passumpsic Bancorp.*, 92 *Federal Reserve Bulletin* C175 (2006); and *Wachovia Corporation*, 92 *Federal Reserve Bulletin* C183 (2006).

<sup>14</sup> See, e.g., *Farmers Bank of Northern Missouri*, FRB Order No. 2015-32 (November 13, 2015).



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 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.

OVBC and Ohio Valley Bank are both well capitalized and would remain so on consummation of the proposed transaction. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.<sup>15</sup> The asset quality, earnings, and liquidity of OVBC and Milton Bancorp are consistent with approval, and OVBC 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 OVBC, Milton Bancorp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by OVBC; 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.

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

The Board also has considered OVBC's plans for implementing the proposal. OVBC 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. OVBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered to be acceptable from a supervisory perspective. In addition, OVBC's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and OVBC plans to integrate Milton Bancorp's existing management and personnel in a manner that augments OVBC's management.<sup>16</sup>

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

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<sup>15</sup> To effect the holding company merger, 20 percent of Milton Bancorp's common stock and all of Milton Bancorp's preferred shares will be converted into a right to receive cash. The remaining portion of Milton Bancorp's common stock will be converted into a right to receive OVBC common stock. OVBC expects to fund the cash portion of the exchange in part through financing from a third-party lender. OVBC has the financial resources to support this obligation.

<sup>16</sup> On consummation, a director and officer of Milton Bancorp and Milton Bank will be retained as President of the Milton Bank Division of Ohio Valley Bank; and the Vice President, Chief Financial Officer, and Secretary of Milton Bank will become the Chief Operating Officer of the Milton Bank Division, Senior Vice President of Ohio Valley Bank, and Vice President of OVBC, respectively.

tion, 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 OVBC and Milton Bancorp in combatting money-laundering activities and complying with the Bank Secrecy Act, are consistent with approval.

### **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.<sup>17</sup> 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”). 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,<sup>18</sup> 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.<sup>19</sup>

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 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 Ohio Valley Bank and Milton Bank; the fair lending and compliance records of both banks; the supervisory views of the Federal Deposit Insurance Corporation (“FDIC”); confidential supervisory information; and information provided by OVBC.

#### *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.<sup>20</sup>

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.<sup>21</sup> An institution’s most recent CRA

<sup>17</sup> 12 U.S.C. § 1842(c)(2).

<sup>18</sup> 12 U.S.C. § 2901(b).

<sup>19</sup> 12 U.S.C. § 2903.

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

<sup>21</sup> 12 U.S.C. § 2906.

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 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 Home Mortgage Disclosure Act ("HMDA") data, 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 such as Ohio Valley Bank 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.<sup>22</sup>

#### *CRA Performance of Ohio Valley Bank*

Ohio Valley Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the Federal Reserve Bank of Cleveland, as of April 28, 2014 ("Ohio Valley Bank Evaluation").<sup>23</sup> Ohio Valley Bank received "Satisfactory" ratings for both the lending test and the community development test.<sup>24</sup>

Examiners determined that the bank's loan-to-deposit ratio was reasonable given the bank's size, financial condition, and assessment area credit needs. Examiners noted that, given the number and dollar amounts of HMDA, consumer, and small business loans originated, as well as the bank's strategic objectives, economic conditions, and competitive factors, Ohio Valley Bank demonstrated a good responsiveness to local credit needs. In addition, examiners noted that a majority of Ohio Valley Bank's loans and other lending-related activities were in its assessment areas. Examiners also found that Ohio Valley Bank's geographic distribution of loans reflected a reasonable dispersion throughout the assessment areas and a reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different revenue sizes.

Examiners found that the bank's community development performance demonstrated a reasonable level of responsiveness to the community development needs of its assessment areas, and the bank had a relatively high level of community development loans. Examiners noted that the bank's retail delivery systems were reasonably accessible to all geographies, including LMI geographies, individuals of different income levels, and businesses of

<sup>22</sup> See 12 CFR 228.26.

<sup>23</sup> The Ohio Valley Bank Evaluation was conducted using Intermediate Small-Bank CRA Examination Procedures, consisting of the lending and community development tests described above. The Ohio Valley Bank Evaluation reviewed lending data from January 1, 2012, to December 31, 2013, and community development activities from September 13, 2010, to April 28, 2014.

<sup>24</sup> The Ohio Valley Bank Evaluation included full-scope reviews of the bank's activities in nonmetropolitan Ohio, nonmetropolitan West Virginia, and the Huntington-Ashland metropolitan statistical area ("MSA").

different revenue sizes. Examiners also noted that the bank provided a high level of community development services.

#### *Ohio Valley Bank's Efforts Since the Ohio Valley Bank Evaluation*

OVBC represents that, since the Ohio Valley Bank Evaluation, Ohio Valley Bank has made a number of community development loans, investments, and donations to support LMI individuals and small businesses within its assessment areas. OVBC represents that the bank has also engaged in various community service and technical assistance opportunities with organizations that support LMI individuals, community development, and small businesses, and has been actively involved in several programs focused on increasing the financial literacy and education of individuals within its assessment areas. In addition, OVBC represents that since the Ohio Valley Bank Evaluation, the bank has instituted a CRA Committee to assist its CRA Officer in ensuring that the bank continues to meet its responsibilities under the CRA in light of the bank's planned future growth.

#### *CRA Performance of Milton Bank*

Milton Bank received an overall rating of "Satisfactory" at its most recent CRA performance examination by the FDIC, as of November 26, 2012 ("Milton Bank Evaluation").<sup>25</sup> Examiners found that the bank's average loan-to-deposit ratio was reasonable given its size, financial condition, and assessment area credit needs. Examiners noted that a majority of the institution's residential mortgage loans and small business loans were in its assessment areas, and its distribution of borrowers reflected reasonable penetration among individuals of different income levels (including LMI individuals) and businesses of different sizes. Examiners also found that the geographic distribution of the bank's loans reflected reasonable dispersion throughout its 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. OVBC represents that customers of Milton Bank will benefit by gaining access to the full range of products and services currently offered by Ohio Valley Bank. For example, customers of Milton Bank will gain access to new deposit products and services, such as business debit cards, health savings accounts, and vacation savings accounts. Customers of Milton Bank will also gain access to new loan products, including home equity lines of credit, an equipment leasing and loan program, and professional and physician loan programs. OVBC also represents that customers of Milton Bank will benefit from expanded banking hours and a wider variety of internet-based banking services. The combined institution will also offer expanded ATM and branch networks to customers of both banks.

#### *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 OVBC, and other potential effects of the proposal on the

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<sup>25</sup> The Milton Bank Evaluation was conducted using the Small Bank CRA Examination Procedures, consisting of the lending test described above. The Milton Bank Evaluation reviewed all loans reported on the bank's HMDA loan application registers and a sample of small business lending during 2010 and 2011. The Milton Bank Evaluation included reviews of the bank's activities in all of the non-MSA counties of Jackson, Vinton, and Fayette in Ohio and all of Madison and Pickaway counties in the Columbus, Ohio, MSA.

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.”<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, OVBC would have approximately \$938.1 million in consolidated assets and, by any of a number of alternative measures of firm size, 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 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**

Ohio Valley Bank has applied under section 9 of the FRA to establish and operate branches at the current locations of Milton Bank, and the Board has considered the factors it is required to consider when reviewing an application under that section.<sup>29</sup> Specifically,

<sup>26</sup> Dodd-Frank Act §§ 604(d) and (f), Pub. L. No. 111-203, 124 Stat. 1376, 1601, 1602 (2010), codified at 12 U.S.C. §§ 1828(c)(5) and 1842(c)(7).

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

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

<sup>29</sup> 12 U.S.C. § 322; 12 CFR 208.6.

the Board has considered Ohio Valley 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 BHC Act, the Bank Merger Act, the FRA, and other applicable statutes. The Board's approval is specifically conditioned on compliance by OVBC and Ohio Valley 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 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 by the Federal Reserve Bank of Cleveland acting pursuant to delegated authority.

By order of the Board of Governors, effective June 28, 2016.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

### **Appendix A**

#### **Branches to Be Acquired by The Ohio Valley Bank Company**

1. 400 East Main Street, Jackson, Ohio 45640
2. 116 Jackson Street, Oak Hill, Ohio 45656
3. 25 North Main Street, New Holland, Ohio 43145
4. 123 South Ohio Avenue, Wellston, Ohio 45692
5. 255 Yankeetown Street, Mount Sterling, Ohio 43143



Bank of the Ozarks, Inc.  
Little Rock, Arkansas

*Order Approving the Merger of Bank Holding Companies and Election of Financial Holding Company Status*

*FRB Order No. 2016-11 (June 28, 2016)*

Bank of the Ozarks, Inc. (“Ozarks”), Little Rock, Arkansas, a bank holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> has requested the Board’s approval under section 3 of the BHC Act<sup>2</sup> to merge with Community & Southern Holdings, Inc. (“C&S Holdco”), and thereby indirectly acquire its subsidiary bank, Community & Southern Bank (“C&S Bank”), both of Atlanta, Georgia. Following the proposed merger, C&S Bank would be merged into Ozarks’ subsidiary bank, Bank of the Ozarks (“BOTO”), also of Little Rock.<sup>3</sup> Ozarks 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.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 *Federal Register* 74105 (November 27, 2015)).<sup>5</sup> 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.

Ozarks, with consolidated assets of approximately \$9.9 billion, is the 152nd largest insured depository organization in the United States. Ozarks controls approximately \$8.0 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.<sup>6</sup> Ozarks controls BOTO, which operates in Alabama, Arkansas, Florida, Georgia, North Carolina, New York, South Carolina, and Texas. BOTO is the 28th largest depository organization in Georgia, controlling deposits of approximately \$689 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>7</sup> BOTO is the 58th largest depository institution in Florida, controlling deposits of approximately \$747 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

C&S Holdco, with consolidated assets of approximately \$4.2 billion, is the 265th largest insured depository organization in the United States. C&S Holdco controls approximately \$3.7 billion in deposits. C&S Holdco controls C&S Bank, which operates in Georgia and Florida. C&S Bank is the 8th largest insured depository institution in Georgia, controlling deposits of approximately \$3.1 billion, which represent approximately 1.4 percent of the total deposits of insured depository institutions in that state. C&S Bank is the 234th largest depository institution in Florida, controlling deposits of approximately \$10.5 million,

<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> On May 12, 2016, the Federal Deposit Insurance Corporation (“FDIC”) approved the merger of C&S Bank into BOTO, pursuant to section 18(c) of the Federal Deposit Insurance Act.

<sup>4</sup> 12 U.S.C. §§ 1843(k) and (l); 12 CFR 225.82.

<sup>5</sup> 12 CFR 262.3(b).

<sup>6</sup> Asset and deposit data are as of June 30, 2015, unless otherwise noted.

<sup>7</sup> In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>8</sup>

On consummation of this proposal, Ozarks would become the 121st largest depository organization in the United States, with consolidated assets of approximately \$14.1 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Ozarks would control consolidated deposits of approximately \$11.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Ozarks would become the 8th largest depository organization in Georgia, controlling deposits of approximately \$3.8 billion, which represent 1.8 percent of the total amount of deposits of insured depository institutions in that state. Ozarks would become the 57th largest depository organization in Florida, controlling deposits of approximately \$757 million, 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.<sup>9</sup> 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.<sup>10</sup> 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, in certain circumstances, if the bank holding company would upon consummation control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.<sup>11</sup>

For purposes of the BHC Act, the home state of Ozarks is Arkansas, and C&S Bank's home state is Georgia.<sup>12</sup> C&S Bank also is located in Florida. Ozarks is well capitalized and well managed under applicable law, and BOTO has a satisfactory Community Reinvestment Act ("CRA")<sup>13</sup> rating. Georgia has a three-year minimum age requirement,<sup>14</sup> and C&S Bank has been in existence for more than three-years. Florida has no minimum age requirement that applies to Ozarks' acquisition of C&S Holdco and C&S Bank.

<sup>8</sup> The amount of C&S Bank's deposits in Florida is based on deposits held at the Jacksonville, Florida branch of CertusBank, N.A., as of June 30, 2015. C&S Bank entered the Florida market in October 2015 through its acquisition of this branch from CertusBank, N.A.

<sup>9</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>10</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>11</sup> 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).

<sup>12</sup> *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.

<sup>13</sup> 12 U.S.C. § 2901 *et seq.*

<sup>14</sup> *See* Ga. Code Ann. § 7-1-622(b).

On consummation of the proposed transaction, Ozarks 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 1.8 percent of the total amount of deposits of insured depository institutions in Georgia and less than 1 percent of the total amount of deposits of insured depository institutions in Florida, the only states in which Ozarks and C&S Holdco 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.<sup>15</sup>

Ozarks and C&S Holdco have subsidiary depository institutions that compete directly in the Athens Area, Georgia banking market (“Athens market”) and the Atlanta, Georgia banking market (“Atlanta market”).<sup>16</sup> 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 Ozarks would control;<sup>17</sup> 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”);<sup>18</sup> 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 Athens market and the Atlanta market. On consummation of the proposal, the Athens market would remain unconcentrated, and the Atlanta market would remain moderately concentrated, as meas-

<sup>15</sup> 12 U.S.C. § 1842(c)(1).

<sup>16</sup> The Athens market is defined as Barrow (excluding the towns of Auburn and Winder), Clarke, Jackson, Madison, Oconee, and Oglethorpe counties, all in Georgia. The Atlanta market is defined as Bartow, Cherokee, Clayton, Cobb, Coweta, Dawson, 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.

<sup>17</sup> Deposit and market share data are as of June 30, 2015, 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).

<sup>18</sup> 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](http://www.justice.gov/opa/pr/2010/August/10-at-938.html).

ured by the HHI. The change in the HHI would be small, and numerous competitors would remain in the markets.<sup>19</sup>

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 Athens or 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 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, 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.

Ozarks and BOTO are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as an exchange of shares, with a subsequent merger of the subsidiary depository institutions.<sup>20</sup> The asset quality, earnings, and liquidity of BOTO and C&S Bank are consistent with approval, and Ozarks appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addi-

<sup>19</sup> Ozarks operates the 22nd largest depository institution in the Athens market, controlling approximately \$20.7 million in deposits, which represent less than 1 percent of market deposits. C&S Holdco operates the ninth largest depository institution in the market, controlling deposits of approximately \$186.8 million, which represent 4.1 percent of market deposits. On consummation of the proposed transaction, Ozarks would become the ninth largest depository organization in the market, controlling deposits of approximately \$207.5 million, which represent 4.6 percent of market deposits. The HHI for the Athens market would increase by 4 points to 839, and 21 competitors would remain in the market. Ozarks operates the 30th largest depository institution in the Atlanta market, controlling approximately \$311.6 million in deposits, which represent less than 1 percent of market deposits. C&S Holdco operates the 12th largest depository institution in the same market, controlling deposits of approximately \$1.7 billion, which represent 1.2 percent of market deposits. On consummation of the proposed transaction, Ozarks would become the 12th largest depository organization in the market, controlling deposits of approximately \$2 billion, which represent 1.4 percent of market deposits. The HHI for the Atlanta market would increase by one point to 1573, and 86 competitors would remain in the market.

<sup>20</sup> As proposed, C&S Holdco would be merged into Ozarks, and shares of C&S Holdco would be converted into a right to receive shares of Ozarks common stock, based on an exchange ratio.

tion, 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 Ozarks, C&S Holdco, and their subsidiary depository institutions, including assessments of their management, riskmanagement systems, and operations. In addition, the Board has considered information provided by Ozarks, the Board's supervisory experiences with Ozarks and C&S Holdco 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.

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

The Board also has considered Ozarks' plans for implementing the proposal. Ozarks has a demonstrated record of successfully integrating organizations into its operations and risk-management systems following acquisitions. Ozarks has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Ozarks would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Ozarks' management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Ozarks plans to integrate C&S Holdco's existing management and personnel in a manner that augments Ozarks' management.<sup>21</sup>

Based on all the facts of record, including Ozarks' 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 Ozarks and C&S Holdco 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.<sup>22</sup> 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

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<sup>21</sup> On consummation, the chief executive officer and founder of C&S Bank will become responsible for Ozarks' offices and operations in Georgia.

<sup>22</sup> 12 U.S.C. § 1842(c)(2).

operate, consistent with their safe and sound operation,<sup>23</sup> 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.<sup>24</sup>

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 acquiring 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 BOTO and C&S Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ozarks, 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 home purchase and refinance loans made by BOTO to African Americans as compared to whites in the Atlanta, Georgia Metropolitan Statistical Area ("MSA") and the Little Rock, Arkansas MSA, as reflected by data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA") for 2014.<sup>25</sup> The commenter also alleges that the proposal raises CRA and consumer compliance issues and cites a media report of a consumer class action lawsuit relating to the bank's overdraft fee practices. The FDIC considered the same comments in connection with its review of the underlying bank merger application and found the CRA record and convenience and needs factor consistent with approval of the proposal on May 12, 2016.<sup>26</sup>

#### *Businesses of the Involved Institutions and Response to Comments*

BOTO provides a broad range of retail and commercial banking products and services including commercial, agricultural, home mortgage, and consumer loans, personal checking and savings accounts, money market deposit accounts, certificates of deposit, and debit cards. BOTO also offers trust and wealth management services. BOTO has 159 branches located throughout Alabama, Arkansas, Florida, Georgia, New York, North Carolina, South Carolina, and Texas.

C&S Bank offers traditional retail banking services including personal, auto, home, and commercial loans and personal and business savings and checking accounts. The bank was established in January 2010 and has expanded through the acquisition of several firms over the past few years. C&S Bank has 42 branches located in Georgia and Florida.

<sup>23</sup> 12 U.S.C. § 2901(b).

<sup>24</sup> 12 U.S.C. § 2903.

<sup>25</sup> 12 U.S.C. § 2801 *et seq.*

<sup>26</sup> See letter from Serena L. Owens, Assistant Regional Director of FDIC's Dallas Regional Office, to Bank of the Ozarks (May 12, 2016).



Ozarks asserts that BOTO has a strong record of compliance with the CRA and fair lending laws, as demonstrated by its rating of “Satisfactory” or better in each of its CRA performance evaluations since 1992.

Ozarks represents that the bank’s lending activity reported under HMDA in the Atlanta MSA is not representative of its overall lending activity because the Atlanta MSA represented only 2.8 percent of the bank’s HMDA applications and 2.2 percent of the bank’s HMDA originations in 2014. Ozarks represents that the proposal would expand the bank’s presence in the Atlanta MSA and would allow it to better serve LMI and minority customers in the area.

Ozarks asserts that the bank’s overall approval rate for HMDA-reportable applications from African Americans in 2014 was 15 percent higher than the approval rate for the aggregate of all HMDA lenders in the Little Rock MSA.<sup>27</sup> Ozarks also represents that BOTO has taken steps to increase HMDA applications and originations from LMI and minority applicants in the Little Rock MSA, including by hiring staff to better serve these applicants, creating new loan products designed for LMI borrowers, and engaging in marketing campaigns designed to reach majority-minority geographies.

Ozarks represents that the class action lawsuit cited by the commenter was voluntarily dismissed by the plaintiff in December 2012 and that BOTO has not applied the payment processing methodology that formed the basis for the plaintiffs’ complaint since July 2011.

#### *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, information provided by public commenters, and information and views provided by the appropriate federal supervisors.<sup>28</sup>

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.<sup>29</sup> 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 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 (1) the number and

<sup>27</sup> The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a given market. In this context, aggregate lending is considered a potential indicator of the lending opportunities in the geographic area in which the bank is located.

<sup>28</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

<sup>29</sup> 12 U.S.C. § 2906.

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;<sup>30</sup> (4) the institution's community development lending, including the number and amount of community development 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.

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.<sup>31</sup> 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 BOTO and C&S Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by Ozarks, and the public comments received on the proposal.

#### *CRA Performance of BOTO*

BOTO was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of September 14, 2015 ("BOTO Evaluation").<sup>32</sup> BOTO received overall ratings of "Low Satisfactory" for the Lending Test, "Outstanding" for the Investment Test, and "High Satisfactory" for the Service Test.<sup>33</sup> The Board has consulted with the FDIC regarding the BOTO Evaluation.

Examiners noted that the bank granted a high percentage of its loans in its assessment areas and the bank established an adequate record regarding its borrower profile loan distribution. Examiners also found that the bank achieved an adequate record regarding its geographic loan distribution and granted a relatively high level of community development loans. Examiners also noted that BOTO made use of innovative or flexible lending practices.

<sup>30</sup> 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.*, 12CFR228.22(b)(3).

<sup>31</sup> 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.

<sup>32</sup> The BOTO Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation included a review of the bank's home mortgage loans, small business loans, and small farm loans for the years 2013 and 2014 and for January through June of 2015. Additionally, examiners reviewed the bank's community development loans from March 2013 through June 2015 and all investment and service activities transacted since March 2013. Qualified investments were also considered if they were originated prior to the evaluation period and remained outstanding as of the date of the evaluation.

<sup>33</sup> The BOTO Evaluation included full-scope reviews of the following MSAs: Atlanta, Georgia MSA; Charlotte, North Carolina MSA; Dallas, Texas MSA; Hilton Head, South Carolina MSA; Little Rock, Arkansas MSA; Mobile, Alabama MSA; North Port, Florida MSA; and Texarkana, Texas and Arkansas MSA. Limited-scope reviews were performed in 19 additional assessment areas in Alabama, Arkansas, Florida, Georgia, North Carolina, and Texas.

Examiners found that BOTO made use of an excellent level of qualified investments. Examiners noted that BOTO established an excellent responsiveness to community development needs and made occasional use of innovative or complex instruments. Examiners stated that many of BOTO's qualified investments were of the type that would not otherwise have been made by the private sector. Examiners concluded that, relative to its capacity and the areas' opportunities, BOTO demonstrated an excellent record for the bank as a whole under the Investment Test.

Examiners noted that BOTO established an overall good record under the Service Test and provided a relatively high level of community development services. Examiners found that BOTO made its delivery systems reasonably accessible throughout its assessment areas. Examiners also noted that changes to BOTO's branch locations improved accessibility of the bank's delivery systems, particularly in LMI geographies and to LMI individuals.

#### *CRA Performance of C&S Bank*

C&S Bank was assigned an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 30, 2014 ("C&S Bank Evaluation").<sup>34</sup> C&S Bank received overall ratings of "Low Satisfactory" for both the Lending Test and the Investment Test and a "High Satisfactory" rating for the Service Test.<sup>35</sup>

Examiners found that C&S Bank demonstrated a good responsiveness to credit needs in its assessment areas. Examiners noted that a high percentage of the bank's loans were made in the bank's assessment areas, and the geographic distribution of loans reflected good penetration throughout the assessment areas. Examiners also found that lending to borrowers reflected a good distribution among businesses of different sizes and retail customers of different incomes. Examiners noted, however, that the bank originated a limited number of community development loans and made limited use of flexible lending practices to address the credit needs of LMI individuals or geographies.

Examiners found that C&S Bank had an adequate level of qualified investments, particularly those that are not routinely provided by private investors. Examiners noted that C&S Bank exhibited an adequate responsiveness to credit and community economic development needs. Examiners also found, however, that the bank did not use innovative or complex investments to support community development initiatives.

Examiners found C&S Bank's delivery systems to be accessible to essentially all portions of the bank's assessment areas. Examiners noted that the bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems and that the bank provided an adequate level of community development services that benefited organizations throughout its assessment areas.

#### *BOTO's Plans for the Combined Bank*

Ozarks represents that it has undertaken efforts to identify the needs of communities served by C&S Bank through consultations with C&S Bank and the FDIC's Community Affairs Department for the Atlanta Region. Ozarks states that these consultations have identified eight nonprofit organizations for BOTO to partner with to enhance its ability to effectively

<sup>34</sup> The C&S Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test and the Service Test was from January 1, 2012, through May 30, 2014. The evaluation period for the Investment Test was from January 28, 2011, through May 30, 2014.

<sup>35</sup> The C&S Bank Evaluation included a full-scope review of the Atlanta-Sandy Springs-Marietta, Georgia MSA and the Georgia Non-Metropolitan Statewide Area. A limited-scope review was conducted in the Athens-Clarke County, Georgia MSA and the Dalton, Georgia MSA.

serve local LMI communities. Ozarks further represents that it plans to place a dedicated CRA loan officer in the Atlanta MSA to help promote products for LMI borrowers. Ozarks also states that BOTO is currently working with an external advertising agency to develop marketing campaigns to promote new mortgage and home improvement loan products that are specifically available to LMI borrowers.

### *Views of the FDIC*

The Board has consulted with the FDIC, the primary federal supervisor of BOTO, regarding the FDIC's review of the proposed merger of BOTO and C&S Bank. The FDIC conducted a review of the same comments that were submitted to the Board, taking into consideration the HMDA data cited by the commenter; BOTO's CRA, consumer compliance, and fair lending records; and BOTO's outreach to African American and LMI borrowers. The FDIC also recently conducted a consumer compliance examination and a CRA evaluation of BOTO. The Board reviewed the examination reports and consulted with the FDIC regarding BOTO'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. BOTO intends to implement those policies and procedures at the combined organization following consummation of the transaction.

The FDIC also considered the proposal in light of the CRA action plan adopted by C&S Bank in connection with the FDIC's approval of C&S Bank's acquisition of certain branches of CertusBank, N.A. (the "C&S Action Plan").<sup>36</sup> After a full review of the proposal, including consideration of the public comments, the FDIC determined that the proposal met the standards of the Bank Merger Act and approved the proposal, subject to the condition that BOTO develop an action plan (the "BOTO Action Plan") within 60 days of consummation of the proposal that does the following: (1) ensures that the objectives and provisions in the C&S Action Plan are taken into account and appropriately reflected with respect to C&S Bank's CRA assessment areas; (2) includes provisions pertaining to branching and office strategies, residential lending distribution, marketing plans, and interaction with community organizations, taking into consideration available aggregate and peer data, demographics, and safe and sound lending considerations; (3) includes a provision to evaluate the bank's CRA assessment areas and make adjustments as necessary in accordance with the requirements of 12 CFR 345.41; and (4) includes provisions whereby BOTO will continue to monitor its level of applications and originations from high minority census tracts or areas and from minorities against peer performance. If gaps are identified in BOTO's performance compared to its peers, the FDIC's approval conditions provide that management should consider additional steps to increase applications and/or originations and thoroughly document the steps it takes to reduce the gaps.

The Board expects BOTO to address the objectives of the BOTO Action Plan fully and promptly. The Board will evaluate BOTO's efforts in this regard as it reviews any future expansionary proposals by Ozarks.<sup>37</sup>

<sup>36</sup> In connection with C&S Holdco's 2014 acquisition of Verity Capital Group, Inc., C&S Holdco committed to the Board to develop and adopt a statement of goals and objectives to continue meeting the credit needs of the communities that the combined organization would serve. To fulfill the commitment, C&S Holdco adopted a statement of goals and objectives (the "Statement") on April 30, 2014, that provided a general framework for evaluating the institution's CRA performance and the credit needs of the communities it serves. C&S Bank then adopted the C&S Action Plan pursuant to a condition that the FDIC imposed in connection with C&S Bank's acquisition of certain branches of CertusBank, N.A. The C&S Action Plan sets forth specific actions that C&S Bank will take in order to enhance its achievement of the goals and objectives outlined in the Statement. The FDIC reviewed and approved the C&S Action Plan on January 26, 2016.

<sup>37</sup> The Federal Reserve Bank of St. Louis, acting under delegated authority, approved a proposal by Ozarks to acquire C1 Financial, Inc., St. Petersburg, Florida, on June 28, 2016, subject to this same provision.

*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. Ozarks represents that it would apply BOTO's lending, investment, and service programs to the operations and activities of C&S Bank and the communities it serves. Ozarks represents that the proposal would provide customers of the combined organization access to additional or expanded services that are not currently offered to C&S Bank customers, including services relating to trust and wealth management, estate planning, employee benefits, and lease financing. Ozarks also represents that the proposal would allow BOTO to make its special purpose loan products for LMI borrowers available to the entire Atlanta MSA, including home mortgage loans and home improvement loans that are specifically tailored to meet the credit needs of borrowers in LMI areas.

*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 Ozarks, 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 proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup>

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Ozarks would have approximately

<sup>38</sup> Dodd-Frank Act § 604(d), Pub. L. No. 111-203, 124 Stat. 1376, 1601(2010), codified at 12 U.S.C. § 1842(c)(7).

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

<sup>40</sup> For further discussion of the financial stability standard, see *Capital One Financial Corporation*, FRB Order 2012-2 (February 14, 2012).



\$14.1 billion in consolidated assets and, by any of a number of alternative measures of firm size, Ozarks 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.

### **Financial Holding Company Election**

As noted above, Ozarks has elected to become a financial holding company in connection with the proposal. Ozarks has certified that it and BOTO are well capitalized and well managed and has provided all the information required under the Board's Regulation Y.<sup>41</sup> Based on all the facts of record, the Board determines that Ozarks' election will become effective upon consummation of the proposal if, on that date, Ozarks 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 application should be, and hereby is, approved.<sup>42</sup> 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 Ozarks 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 St. Louis acting under delegated authority.

<sup>41</sup> See Dodd-Frank Act § 606(a), 124 Stat. at 1607, amending 12 U.S.C. § 1843(l)(1); 12CFR 225.82(f).

<sup>42</sup> The commenter 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. 12U.S.C. § 1842(b); 12CFR 225.16(e). The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, commenters have had ample opportunity to submit comments on the proposal and, in fact, the commenter submitted written comments that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact material to the Board's decision and that would be clarified by a public meeting. In addition, the request does not demonstrate why the written comments do not present the commenter's 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 request for a public hearing or meeting on the proposal is denied.



By order of the Board of Governors, effective June 28, 2016.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Orders Issued Under Section 4 of the Bank Holding Company Act

Sumitomo Mitsui Trust Holdings, Inc. and Sumitomo Mitsui Trust Bank, Limited  
Tokyo, Japan

*Order Approving Notice to Engage in Nonbanking Activities*  
*FRB Order No. 2016-07 (June 10, 2016)*

Sumitomo Mitsui Trust Holdings, Inc., and its wholly owned subsidiary, Sumitomo Mitsui Trust Bank, Limited (“SMTB”), both of Tokyo, Japan (collectively “SuMi Trust”), have requested the Board’s approval under section 4(c)(8) of the Bank Holding Company Act of 1956 (“BHC Act”)<sup>1</sup> and section 225.24 of the Board’s Regulation Y<sup>2</sup> to acquire 50 percent of the voting shares of Marubeni Rail Transport, Inc. (“MRTI”), a Delaware corporation, and thereby acquire its wholly owned subsidiary, Midwest Railcar Corporation (“MRC”), an Illinois corporation, engaged in railcar leasing and related activities in North America.<sup>3</sup> As a result of the proposed acquisition, SuMi Trust would engage in certain nonbanking activities.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (81 *Federal Register* 7341 (February 11, 2016)). The time for submitting comments has expired, and the Board has considered the notice and all comments received in light of the factors set forth in section 4 of the BHC Act.

SuMi Trust, with consolidated assets of approximately \$518 billion, is the sixth largest banking organization in Japan. Through its subsidiaries, SuMi Trust primarily engages in trust, banking, and other financial service businesses in Japan and conducts commercial banking, asset management, and custodial operations in the United States, the United Kingdom, and Singapore. In the United States, SMTB maintains an uninsured state-licensed branch in New York, New York, and SMTB is the sole owner of SuMi Trust USA, a state nonmember bank in New Jersey that is insured by the Federal Deposit Insurance Corporation. SuMi Trust and SMTB also own Nikko Asset Management Americas, Inc., New York, New York, a nonbank asset management company.

The Board has determined by regulation that each of the proposed activities is closely related to banking for purposes of section 4(c)(8) of the BHC Act.<sup>5</sup> SuMi Trust has committed to conduct the proposed activities in accordance with the limitations set forth in Regulation Y and the Board’s orders.

In reviewing the proposal, the Board is required by section 4(j)(2)(A) of the BHC Act to determine that the proposal “can reasonably be expected to produce benefits to the public ... that outweigh possible adverse effects, such as undue concentration of resources,

<sup>1</sup> 12 U.S.C. §§ 1843(c)(8) and 1843(j).

<sup>2</sup> 12 CFR 225.24.

<sup>3</sup> SuMi Trust is subject to the BHC Act by virtue of its ownership of a U.S. banking subsidiary, Sumitomo Mitsui Trust Bank (U.S.A.) Limited (“SuMi Trust USA”), Hoboken, New Jersey.

<sup>4</sup> These nonbanking activities include railcar leasing and the provision of certain railcar fleet management services pursuant to section 225.28(b)(3) (leasing personal property and acting as agent, broker, or adviser in leasing personal property) and section 225.21(a)(2) (engaging in incidental activities that are necessary to carrying on permissible nonbanking activities), both of the Board’s Regulation Y (12CFR part 225).

<sup>5</sup> 12 CFR 225.28(b)(3).

decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system.”<sup>6</sup>

As part of its evaluation of these factors, the Board considers the financial and managerial resources of the companies involved and the effect of the proposal on those resources.<sup>7</sup> In assessing the financial and managerial resources of the companies involved, the Board has considered, among other items, information provided by SuMi Trust, a public comment on the proposal, confidential reports of examination, other confidential supervisory information, and publicly reported financial and other information.

In evaluating the financial considerations of this proposal, the Board has considered a number of factors, including capital adequacy and the nature of the transaction. SuMi Trust has capital ratios in excess of the minimum levels that would be required by the Basel Capital Accord and that are considered equivalent to the capital that would be required of a U.S. banking organization. The transaction will be structured as a purchase of common stock funded by cash on hand and will not have a significant impact on SuMi Trust’s financial condition.

In addition, the Board has considered the managerial resources of SuMi Trust, the supervisory experiences of the relevant supervisory agencies with SuMi Trust, and SuMi Trust’s record of compliance with applicable U.S. banking laws. The Board has also considered public comment on the proposal and reviewed reports of examination from the appropriate federal and state supervisors of the U.S. operations of SuMi Trust assessing its managerial resources.<sup>8</sup> Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources of the organizations involved are consistent with approval.

Section 4(j)(2)(A) of the BHC Act also requires the Board to consider whether the proposal is likely to pose a significant risk to the stability of the United States banking or financial system. The proposed acquisition is limited in size and substitute providers of the proposed activities are readily available. The investment proposed by SuMi Trust in MRC is relatively small compared to SuMi Trust’s total consolidated assets, and MRC is small relative to other market participants. The Board believes that the proposal would not pose a significant risk to the United States banking or financial system.

The Board also has considered the competitive effects of the proposal in light of all the facts of record. The market for the proposed leasing activities is unconcentrated and highly competitive. The investment will not eliminate any market participants or otherwise diminish the presence of competitors in the market. Based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition for the relevant nonbanking activities.

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<sup>6</sup> 12 U.S.C. § 1843(j)(2)(A).

<sup>7</sup> 12 CFR 225.26.

<sup>8</sup> A commenter expressed concerns about the compliance record of the company that proposes to sell shares of MRTI to SuMi Trust and to be SuMi Trust’s co-venturer in MRTI. This company, Marubeni Corporation, Tokyo, Japan, had been charged with violations of the Foreign Corrupt Practices Act (“FCPA”) for misconduct that occurred in the late 1990s and 2000s. The Board has considered these comments in light of all the facts of record, including that SuMi Trust is investing in MRTI, not Marubeni Corporation; neither MRTI nor MRC were involved in Marubeni Corporation’s FCPA violations; and MRC’s activities take place exclusively in the United States and Canada, where the rail industry is highly regulated. SuMi Trust is also expected to implement any policies and procedures necessary as part of its overall risk management framework to effectively oversee MRC and designate specific employees to ensure ongoing compliance by MRC with all applicable laws and regulations.

The Board expects that SuMi Trust's performance of the activities would result in benefits to the public by enabling SuMi Trust to provide expanded personal property leasing and other related services to its customers and the public. The investment by SuMi Trust in MRTI may also strengthen and diversify the railcar leasing industry in North America through MRTI's partnership with a global financial institution. The Board concludes that the proposed activities, conducted in accordance with the Board's Regulation Y and Board precedent,<sup>9</sup> is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or a significant risk to the stability of the United States banking or financial system, that would outweigh the public benefits of the proposal discussed above. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor that it must consider under section 4(j) of the BHC Act is consistent with approval of this proposal.

Based on the foregoing and all the facts of record, the Board has determined that the notice 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. The Board's approval is specifically conditioned on compliance by SuMi Trust with the conditions imposed in this order and the commitments made to the Board in connection with the notice. The Board's approval is also subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),<sup>10</sup> and to the Board's authority to require such modification or termination of the activities of SuMi Trust and any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision 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 under delegated authority.

By order of the Board of Governors, effective June 10, 2016.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

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<sup>9</sup> The commenter expressed concerns about ensuring that SuMi Trust's leasing activities, conducted through MRC, would conform to the requirements of the Board's Regulation Y. Among other commitments, SuMi Trust has committed that it will ensure that MRC conducts its railcar leasing and related activities in accordance with section 4 of the BHC Act and part 225 of the Board's Regulation Y, including that such leases be on a nonoperating basis.

<sup>10</sup> 12 CFR 225.7 and 225.25(c).

## Orders Issued Under Federal Reserve Act

Origin Bank  
Choudrant, Louisiana

*Order Approving Establishment of Branches*  
*FRB Order No. 2016-05 (May 4, 2016)*

Origin Bank, Choudrant, Louisiana, a state member bank subsidiary of Origin Bancorp, Inc. (“Origin Bancorp”), Ruston, Louisiana, has requested the Board’s approval under section 9 of the Federal Reserve Act (“FRA”)<sup>1</sup> and the Board’s Regulation H<sup>2</sup> to establish a branch at 2049 West Gray Street, Houston, Texas, and to establish a mobile branch to serve Harris County, Texas (the “mobile branch”).<sup>3</sup> The proposed mobile branch would be a branch under federal law because it would take deposits from Origin Bank’s customers, pay checks, and make small consumer loans.<sup>4</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board’s Rules of Procedure.<sup>5</sup> The time for submitting comments has expired, and the Board has received one comment on the proposal.

Origin Bancorp is the 56th largest depository organization in Texas with 17 branches throughout Texas, controlling approximately \$1.1 billion in deposits, which represents less than 1 percent of the total amount of deposits of insured depository institutions in that state.<sup>6</sup> Origin Bank’s main office is in Choudrant, Louisiana, and it operates 44 branches throughout Louisiana, Mississippi, and Texas.

Under section 208.6 of 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 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

<sup>1</sup> Section 9 of the FRA, 12 U.S.C. § 321, which applies the interstate branching provisions of the National Bank Act, 12 U.S.C. § 36(c)(2), permits a state member bank with a branch in a state other than the bank’s home state to establish additional branches in that state to the same extent as a bank chartered in that state. Origin Bank currently operates branches in Texas and is permitted under section 9 of the FRA and Texas state law to establish additional branches in Texas. *See* 12 U.S.C. § 36(c)(2); Tex.Fin.CodeAnn. § 203.006 (permitting an out-of-state bank that has established or acquired a branch in Texas to establish or acquire additional branches in Texas to the same extent that a Texas state-chartered bank could under state or federal law).

<sup>2</sup> 12 CFR part 208.

<sup>3</sup> The mobile branch would provide banking services to one or more retirement communities and senior care facilities in Harris County, Texas, and Origin Bank would not operate the mobile branch in any other county in Texas. Origin Bank is permitted to operate a mobile branch in Texas under both Texas and Louisiana state law. *See* Tex.Dep’t of Banking, Opinion No. 95-15 (Mar. 13, 1995) (authorizing a Texas state-chartered bank to establish and operate a mobile branch within an identifiable service or marketing area); Tex. Fin. Code Ann. § 203.002 (permitting an out-of-state bank to establish and maintain a branch in Texas subject to applicable state law); La.Stat.Ann. § 6:537.1 (permitting a Louisiana state bank to establish a branch in any other state to the same extent as, and to have the right and power to exercise and enjoy all rights, powers, privileges, and immunities accorded to, any state-chartered bank, national bank, foreign bank, or other similar institution in the host state).

<sup>4</sup> 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.

<sup>5</sup> 12 CFR 262.3(b).

<sup>6</sup> Data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

Reinvestment Act (“CRA”);<sup>7</sup> and (5) whether the bank’s investment in bank premises in establishing the branch satisfies certain criteria.<sup>8</sup> The Board has considered the applications in light of these factors and the public comment received on the proposal.

### **Financial, Managerial, and Other Supervisory Considerations**

In considering the financial history and condition, earnings prospects, and capital adequacy of Origin Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Origin Bank, and the comment received. Origin 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 Origin Bank are consistent with approval of the proposal. The Board also has reviewed Origin Bank’s proposed investment in the branches and concludes that its investment is consistent with regulatory limitations on investment in bank premises.<sup>9</sup>

In considering Origin 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 Origin 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.<sup>10</sup> Origin Bank is considered to be well managed. Based on this review and all the facts of record, the Board concludes that the character of Origin Bank’s management, as well as Origin Bank’s effectiveness in combatting money-laundering activities and its branch security procedures, are 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.<sup>11</sup> 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 insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>12</sup> 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.<sup>13</sup>

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 appli-

<sup>7</sup> 12 U.S.C. § 2901 *et seq.*

<sup>8</sup> 12 CFR 208.6(b).

<sup>9</sup> 12 CFR 208.21(a).

<sup>10</sup> See 12 CFR 208.61(c).

<sup>11</sup> 12 CFR 208.6(b)(3).

<sup>12</sup> 12 U.S.C. § 2901(b).

<sup>13</sup> 12 U.S.C. § 2903.



cant, 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 Origin Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Origin Bank, and the public comment received on the proposal. One commenter objects to the proposal, alleging that Origin Bank has engaged in discriminatory practices in Houston and Dallas, both in Texas. In particular, the commenter alleges that Origin Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community development activities, and branching in those neighborhoods.

#### *Business of the Involved Institution and Response to Comment*

Origin Bank is a full service bank that offers a wide range of financial services throughout Louisiana, Mississippi, and Texas. Origin Bank is a relatively recent entrant in the Houston–Sugar Land–Baytown Metropolitan Statistical Area (“Houston MSA”) banking market. Origin Bank first entered the market in 2013 through the establishment of two branches, followed by an additional branch establishment in 2014 and the acquisition of four branches in 2015. Although Origin Bank's lending activities in the Houston MSA primarily consist of commercial lending, as the bank expanded its footprint in the market, its lending portfolio also has included increasing amounts of residential real estate loans, consumer loans, and small business and small farm loans. Origin Bank entered the Dallas banking market in 2008 and operates seven branches in that banking market.

Origin Bank denies the commenter's allegations, arguing that its record of home mortgage and small business lending in the Houston MSA reflects a growing distribution of lending in minority and LMI census tracts and demonstrates the bank's effort as a recent entrant into the market to increasingly serve these communities. More generally, Origin Bank asserts that the bank's products and services are reviewed in accordance with the bank's policies and procedures with respect to all fair lending laws and regulations. The bank further asserts that its lending practices are based on criteria that ensure safe and sound lending and equal access to credit by creditworthy applicants, and that the bank has comprehensive policies and procedures in place to accomplish these goals. These policies and procedures include annual fair lending training for all bank employees and periodic analyses of the geographic distribution of all loans to ensure that no minority and LMI areas are excluded from the bank's lending activity and to delineate the bank's assessment areas. Origin Bank also represents that it conducts an ongoing fair lending monitoring process that includes adherence to rate sheets, an annual review of advertising to ensure there are no exclusions of minority or LMI areas, and an annual independent third-party compliance audit.

#### *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 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.<sup>14</sup>

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<sup>14</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 *Federal Register* 11642, 11665 (March 11, 2010).

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.<sup>15</sup> 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,<sup>16</sup> 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 these 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;<sup>17</sup> (4) the institution's community development lending, including the number and amount of community development 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.

#### *CRA Performance of Origin Bank*

Origin Bank was assigned an overall "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Dallas ("Reserve Bank"), as of September 16, 2013 ("Origin Bank Evaluation").<sup>18</sup> Origin Bank received "High Satisfactory" ratings for each of the Lending Test, the Investment Test, and the Service Test.<sup>19</sup>

Examiners noted that Origin Bank originated a high percentage of loans within its assessment areas and showed good responsiveness to credit needs throughout its assessment areas. Examiners also noted that Origin Bank's geographic distribution of loans reflected

<sup>15</sup> 12 U.S.C. § 2906.

<sup>16</sup> 12 U.S.C. § 2801 *et seq.*

<sup>17</sup> 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).

<sup>18</sup> The Origin Bank Evaluation was conducted using Large Institution CRA Examination Procedures. The evaluation period for the Lending Test was from January 1, 2012, through December 31, 2012. The evaluation period for the Investment Test and the Service Test was from January 18, 2012, through August 31, 2013.

<sup>19</sup> The Origin Bank Evaluation included a full-scope review of four assessment areas: the Monroe, Louisiana, Metropolitan Statistical Area ("MSA"); the Lincoln Parish, Louisiana, assessment area; a portion of the Dallas–Plano–Irving, Texas, Metropolitan Division ("Dallas assessment area"); and a portion of the Jackson, Mississippi, MSA. A limited-scope review was performed of the Morehouse Parish, Louisiana, assessment area; the Shreveport–Bossier, Louisiana, MSA; a portion of the Fort Worth–Arlington, Texas, Metropolitan Division (Tarrant County); and the Lafayette County, Mississippi, assessment area. The Origin Bank Evaluation did not include a review of the Houston MSA because Origin Bank did not enter into that market until after the evaluation period.

good penetration throughout the assessment areas. Further, examiners found that the bank had a good distribution of borrowers of different income levels and business customers of different sizes. Examiners also noted that Origin Bank made an adequate level of community development loans inside its assessment areas. The bank also exhibited a good record of serving the credit needs of low-income individuals and areas and small businesses. For instance, Origin Bank's community development loans provided funding for organizations that provide community services to LMI individuals, school districts, and affordable housing projects.

In the Dallas assessment area, an area of concern to the commenter, examiners found that Origin Bank exhibited adequate lending performance. Examiners determined that the bank's lending activity reflected adequate responsiveness to assessment area credit needs and that the bank's geographic distribution of loans reflected adequate penetration throughout the assessment area. The bank's distribution of borrowers was judged to reflect adequate penetration among borrowers of different income levels and businesses of different revenue sizes. Origin Bank also was found to have made an adequate level of community development loans in the assessment area.

Examiners found that Origin Bank had provided a good level of qualified community development investments and grants and was in a leadership position in these investments. Examiners also noted that the bank demonstrated good responsiveness to credit and community development needs in the areas in which it operates. Examiners also found that Origin Bank's investments met identified needs of its assessment areas.

In the Dallas assessment area, Origin Bank's performance on the Investment Test was found by examiners to be adequate. Origin Bank exhibited adequate responsiveness to credit and community development needs through its investment activities in the assessment area, which included grants for organizations serving diverse community development needs.

Examiners highlighted that Origin Bank provided a high level of community development services throughout its assessment areas. Examiners noted that many of the bank's branches are located in or close to LMI geographies or middle-income distressed or underserved geographies. Further, examiners noted that Origin Bank's services did not vary in a way that inconvenienced the bank's assessment areas, particularly LMI geographies and LMI individuals. Examiners also found that the bank's delivery systems were accessible throughout the bank's assessment areas and to individuals of different income levels. Examiners also noted that the bank's record of opening and closing branches did not adversely affect the accessibility of its delivery systems, particularly to LMI geographies and LMI individuals.

In the Dallas assessment area, examiners found that Origin Bank's performance on the Service Test was adequate. The bank's retail and community development services were judged to be accessible to the bank's assessment area and individuals of different income levels. In addition, the bank provided numerous community development services that were responsive to the community and credit needs of the assessment area.

#### *Origin Bank's Activities since the 2013 CRA Evaluation*

Origin Bank represents that since the Origin Bank Evaluation in 2013, it has continued to provide a variety of products and services that are designed to meet the needs of LMI individuals and geographies in its assessment areas, including the Houston MSA and the Dallas assessment area. For example, the bank offers products and services tailored to LMI individuals and geographies, such as a flexible-term down-payment program for first-time

home buyers and a low-cost checking account with no minimum deposit and no monthly minimum balance requirement. Origin Bank also has partnered with the Texas State Affordable Housing Corporation to offer affordable mortgage products with down-payment assistance to LMI consumers. In addition, Origin Bank represents that its employees have volunteered at organizations that serve minority and LMI residents of Houston, Texas. Origin Bank also represents that it has made significant community development loans, investments, and donations throughout its entire assessment areas, including the Houston MSA and the Dallas assessment area.

Since 2013, Origin Bank also has made improvements to its compliance program, including its policies and procedures related to fair lending. Origin Bank has enhanced its fair lending policies and procedures, including with respect to the delineation of the bank's assessment areas and its lending, branching, marketing, advertising, and outreach activities. Specifically, the bank's fair lending policy requires a review of its assessment areas at least annually to evaluate any significant changes in assessment area demographics and the impact on any of the banking products and services offered by the bank. Additionally, prior to entering or pursuing a new market, Origin Bank's fair lending policy requires the bank to review demographic data to ascertain the bank's fair lending risks associated with the expansion.

Origin Bank also has strengthened its internal controls related to mortgage lending. Specifically, the bank has implemented software to monitor mortgage loan applications and has developed procedures to better ensure that the applications are processed in accordance with the bank's fair lending policies. Origin Bank also has required additional training for its employees on applicable fair lending laws and regulations.

#### *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. Origin Bank represents that the branches would allow it to better serve the residents of Harris County and to strengthen its existing business relationships in the county and the surrounding communities. In addition, the mobile branch would offer banking services to the elderly and home-bound individuals at retirement centers in Harris County who cannot easily access a physical branch facility.

#### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of Origin Bank under the CRA, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Origin Bank, the public comment 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.

### **Conclusion**

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

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

By order of the Board of Governors, effective May 4, 2016.

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

## Compass Bank Birmingham, Alabama

### *Order Approving the Establishment of a Branch FRB Order No. 2016-08 (June 17, 2016)*

Compass Bank, Birmingham, Alabama, a state member bank subsidiary of Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain, has requested the Board's approval under section 9 of the Federal Reserve Act ("FRA")<sup>1</sup> and the Board's Regulation H<sup>2</sup> to establish a branch at 5900 Quebec Street, Fort Worth, Texas.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in accordance with the Board's Rules of Procedure.<sup>3</sup> The time for submitting comments has expired, and the Board has considered the comment on the proposal.

Compass Bank is the fifth largest depository institution in Texas, controlling approximately \$35.7 billion in deposits, which represent 4.9 percent of the total amount of deposits of insured depository institutions in that state.<sup>4</sup> Compass Bank's main office is in Birmingham, Alabama. Compass Bank operates a total of 676 offices in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas.

Under section 208.6 of the Board's Regulation H,<sup>5</sup> which implements section 9 of the FRA, the factors that the Board must consider in acting on branch applications include (1) the financial history and condition of the applying bank and the general character of its management; (2) the adequacy of the bank's capital and its future earnings prospects; (3) the convenience and needs of the community to be served by the branch; (4) in the case of branches with deposit-taking capability, the bank's performance under the Community Reinvestment Act ("CRA");<sup>6</sup> and (5) whether the bank's investment in bank premises in establishing the branch satisfies certain criteria.<sup>7</sup>

The Board has considered the application in light of these factors and the public comment received on the proposal.

### **Financial, Managerial, and Other Supervisory Considerations**

In considering the financial history and condition, earnings prospects, and capital adequacy of Compass Bank, the Board has reviewed reports of examination, other supervisory information, publicly reported and other financial information, information provided by Compass Bank, and the comment received. Compass Bank is well capitalized

<sup>1</sup> 12 U.S.C. § 321. Under section 9 of the FRA, a state member bank may establish and operate branches on the same terms and conditions as are applicable to the establishment of branches by national banks. Thus, a state member bank may establish branches at any point in a state in which the bank has its main office or a branch. See 12 U.S.C. § 36(c)(2). Compass Bank has branches in Texas and is permitted to establish additional branches under Texas state law. See Tex. Fin. Code Ann. § 203.006 (permitting an out-of-state bank that has established or acquired a branch in Texas to establish or acquire additional branches in Texas to the same extent that a Texas state-chartered bank could do under state or federal law).

<sup>2</sup> 12 CFR part 208.

<sup>3</sup> 12 CFR 262.3(b).

<sup>4</sup> Deposit data are as of June 30, 2015. In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

<sup>5</sup> 12 CFR 208.6(b).

<sup>6</sup> 12 U.S.C. § 2901 *et seq.*

<sup>7</sup> 12 CFR 208.21(a).



and would remain so on 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 Compass Bank are consistent with approval of the proposal. The Board also has reviewed Compass Bank's proposed investment in the branch and concludes that its investment is consistent with regulatory limitations on investment in bank premises.<sup>8</sup>

In considering Compass Bank's managerial resources, the Board has reviewed Compass Bank's examination record, including assessments of its management, risk-management systems, and operations. The Board also has considered its supervisory experiences with Compass Bank and the bank's record of compliance with applicable banking laws, including anti-money-laundering laws. Based on this review and all the facts of record, the Board concludes that Compass Bank's management, as well as the effectiveness of Compass Bank in combatting money-laundering activities, are 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.<sup>9</sup> 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 insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,<sup>10</sup> 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.<sup>11</sup>

In addition, the Board considers the bank's overall compliance record and the result 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. 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.

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 Compass Bank, the fair lending and compliance records of the bank, confidential supervisory information, information provided by Compass Bank, and the public comment received on the proposal. A commenter objects to the proposal, alleging that Compass Bank has engaged in discriminatory practices in Houston and Dallas, both in Texas. In particular, the commenter alleges that Compass Bank disfavors certain African American neighborhoods in Houston and Dallas and has limited its lending, marketing activities, community devel-

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<sup>8</sup> 12 CFR 208.21(a).

<sup>9</sup> 12 CFR 208.6(b)(3).

<sup>10</sup> 12 U.S.C. § 2901(b).

<sup>11</sup> 12 U.S.C. § 2903.

opment activities, and branching in those neighborhoods. The commenter alleges that Compass Bank engages in “redlining” and “reverse redlining” in these areas.<sup>12</sup> The commenter also alleges that the branch is not permissible under supervisory guidance regarding branching by state member banks.<sup>13</sup>

Compass Bank denies the commenter’s allegations, stating that it has implemented safeguards to prevent illegal discrimination. For instance, Compass Bank has adopted a Fair and Responsible Banking Program, under which the bank conducts fair lending risk assessments and fair lending monitoring, trains staff, and provides regular reports to management and board committees that govern the bank’s fair lending program. Compass Bank represents that, in 2015, the bank established a separate mortgage redlining risk assessment process, which includes a review of branch distribution, branch staffing, assessment area delineations, and application and origination monitoring within majority-minority census tracts for all assessment areas. The bank also established routine mortgage redlining monitoring. In addition, Compass Bank contends that the proposed branch, which would be located in a moderate-income census tract, would permit the bank to serve new and existing customers in LMI communities.

#### *Record 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 the commenter 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.<sup>14</sup>

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.<sup>15</sup> 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”),<sup>16</sup> 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

<sup>12</sup> Redlining is the practice of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristics of the residents of the area in which a credit seeker resides or will reside or in which a property to be mortgaged is located. Reverse redlining is the practice of targeting certain borrowers or areas with less advantageous products or services based on prohibited characteristics. Office of the Comptroller of the Currency et al., *Interagency Fair Lending Examination Procedures* (August 2009), available at <https://www.ffiec.gov/pdf/fairlend.pdf>.

<sup>13</sup>

See SR Letter 13-7. The Board has taken into account the supervisory record of Compass Bank in considering the proposal.

<sup>14</sup> See *Interagency Questions and Answers Regarding Community Reinvestment*, 75FR 11642, 11665 (March 11, 2010).

<sup>15</sup> 12 U.S.C. § 2906.

<sup>16</sup> 12 U.S.C. § 2801 *et seq.*

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;<sup>17</sup> (4) the institution's community development lending, including the number and amount of community development 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.

### *CRA Performance of Compass Bank*

Compass Bank was assigned an overall "Satisfactory" rating<sup>18</sup> at its most recent CRA performance evaluation by the Federal Reserve Bank of Atlanta ("Reserve Bank"), as of December 7, 2015 ("Compass Bank Evaluation").<sup>19</sup> Compass Bank received a "High Satisfactory" rating for both the Lending Test and the Investment Test, and a "Low Satisfactory" rating for the Service Test.<sup>20</sup>

Examiners found that Compass Bank's overall lending activity in its assessment areas was good in Texas and in five other states.<sup>21</sup> According to examiners, the bank's geographic distribution of loans through the assessment areas was good. Examiners also found that the bank had a good distribution of loans among borrowers of different income levels and businesses of different sizes. Examiners noted that the bank made an adequate level of

<sup>17</sup> 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.*, 12CFR228.22(b)(3).

<sup>18</sup> The commenter contends that Compass Bank's record of performance under the CRA warrants denial of the proposal because Compass Bank received an overall "Needs to Improve" rating at its CRA performance evaluation dated October 21, 2013. In assessing the proposal, the Board considered Compass Bank's most recent CRA performance evaluation because it represents the most up-to-date evaluation of the bank's overall record of lending in its communities.

<sup>19</sup> The Compass Bank Evaluation was conducted using Large Bank CRA Examination Procedures. Examiners reviewed HMDA-reportable and CRA small business lending from January 1, 2014, through December 31, 2014, except for community development loans, which were evaluated from April 1, 2013, through March 31, 2015. The evaluation period for the Investment Test and the Service Test was from April 1, 2013, through March 31, 2015.

<sup>20</sup> The Compass Bank Evaluation included a full-scope review of the bank's assessment areas within the following areas: the Birmingham–Hoover, Alabama, Metropolitan Statistical Area ("MSA"); the Mobile, Alabama, MSA; the Phoenix–Mesa–Glendale, Arizona, MSA; the Riverside–San Bernardino–Ontario, California, MSA; the San Diego–Carlsbad–San Marcos, California, MSA; the Stockton, California, MSA; the Denver–Aurora–Broomfield, Colorado, MSA; the Jacksonville, Florida, MSA; the Albuquerque, New Mexico, MSA; the Dallas–Fort Worth–Arlington, Texas, MSA ("Dallas assessment area"); the Houston–Sugar Land–Baytown, Texas, MSA ("Houston assessment area"); the San Antonio–New Braunfels, Texas, MSA, and the assessment area comprising Val Verde and Maverick counties, both in Texas. A limited-scope review was conducted in 65 other assessment areas in Alabama, Arizona, California, Colorado, Florida, New Mexico, and Texas.

The commenter alleged that Compass Bank's definitions of the Houston and Dallas assessment areas arbitrarily exclude African American neighborhoods in the Houston and Dallas areas. The Board's regulations prohibit the delineation of a CRA assessment area that reflects illegal discrimination. 12 CFR 228.41(e)(2). Assessment areas generally should include entire political subdivisions. Interagency Questions and Answers Regarding Community Reinvestment, 75FR 11642, 11666 (March 11, 2010). The Houston assessment area comprises the entirety of Austin, Brazoria, Fort Bend, Galveston, Harris, and Montgomery counties, all in Texas. The Dallas assessment area comprises the entirety of Collin, Denton, Dallas, Ellis, Hood, Johnson, Kaufman, Parker, and Tarrant counties, all in Texas. Reserve Bank examiners found that the bank's assessment areas were appropriate and offered opportunities to lend in majority-minority geographies.

<sup>21</sup> Compass Bank showed good lending performance in Alabama, Arizona, Colorado, Florida, New Mexico, and Texas. Compass Bank showed adequate lending performance in California.

community development loans during the review period. Compass Bank's community development loans were made for a variety of purposes, including providing community services targeted to LMI individuals, promoting economic development by financing small businesses, supporting affordable housing, and revitalizing or stabilizing targeted LMI census tracts.

In the Houston assessment area, an area where the commenter focused, examiners determined that Compass Bank exhibited good lending performance. The bank's geographic distribution of loans was judged to reflect good penetration throughout the assessment area. Examiners found that the bank's distribution of borrowers reflected good penetration among borrowers of different income levels and businesses of different revenue sizes. Compass Bank was found to have made a relatively high level of community development loans in the assessment area.

In the Dallas assessment area, another area of concern to the commenter, Compass Bank showed good lending performance. Examiners found that the bank's geographic distribution of loans reflected good penetration throughout the assessment area. The bank's distribution of borrowers was found by examiners to reflect excellent penetration among borrowers of different income levels and businesses of different revenue sizes. Compass Bank was found to have made an adequate level of community development loans in the assessment area.

Examiners found that Compass Bank's overall investment performance was good in Texas and Alabama and adequate in the other states in which it operates.<sup>22</sup> A majority of Compass Bank's investments supported affordable housing. Compass Bank purchased securities backed by government-guaranteed mortgages to qualified LMI borrowers, made investments in Low Income Housing Tax Credit projects,<sup>23</sup> and made investments in community development financial institutions that finance affordable housing for LMI borrowers and promote economic development via small business loan funds and microfinancing. Examiners found that the majority of the bank's qualified contributions provided support for organizations engaged in community services for LMI individuals or communities, including financial counseling, youth and family programs, home repairs, health services, and job training.

In the Houston and Dallas assessment areas, examiners found that Compass Bank made a significant level of qualified investments and was in a leadership position for some of its investments. Examiners found that Compass Bank's contributions were responsive to identified community development needs in these assessment areas and included investments in projects that supported affordable housing, financial education and literacy, and small business development.

Compass Bank demonstrated good Service Test performance in Alabama and showed adequate performance in the other states in which it operates, including Texas. Examiners noted that Compass Bank's retail delivery systems were reasonably accessible to the geographies and individuals of different income levels. Examiners found that the bank's banking services and business hours did not vary in a way that inconvenienced any portion of the bank's assessment areas, particularly LMI geographies and individuals. Examiners also noted that Compass Bank offered no- or low-cost deposit accounts and various alternative delivery systems. However, examiners found that Compass Bank's closing of branches adversely affected the accessibility of banking services in some assessment areas.

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<sup>22</sup> Compass Bank's performance in Texas had the greatest impact on its performance under the Investment Test due to the relatively high concentration of branches, deposits, and lending.

<sup>23</sup> See 26 U.S.C. § 42.

During the review period, the bank closed 39 branches, and 10 of these branches were located in LMI census tracts.<sup>24</sup>

Examiners indicated that the bank provided an adequate level of community development services throughout the bank's assessment areas. Examiners noted that the bank's employees were involved in organizations and activities that promote or facilitate affordable housing for LMI individuals; provide community services for LMI individuals, such as financial literacy education; and promote economic development and revitalization of LMI areas.

In the Houston and Dallas assessment areas, Compass Bank's performance on the Service Test was found to be adequate. In the Dallas assessment area, examiners determined that the bank's delivery systems were reasonably accessible to the bank's geographies and individuals of different income levels; however, in the Houston assessment area, the bank's delivery systems were inaccessible to portions of the bank's geographies. In the Houston and Dallas assessment areas, examiners found that Compass Bank provided relatively high and adequate levels, respectively, of community development services. The bank's community development services were judged to be responsive to identified community development needs in these 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. As noted above, the proposal would increase the availability of banking services in a moderate-income census tract. Compass Bank has represented that opening the proposed branch will increase the number of branches in LMI census tracts in this assessment area and will improve its ability to serve new and existing customers in LMI communities.

More generally, Compass Bank also developed a plan to provide \$11 billion in products and services for LMI communities over the next five years. Under this plan, the bank intends to increase investments in affordable housing, small businesses, community services, and financial education.

#### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the records of Compass Bank under the CRA, the bank's records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Compass Bank, the public comment 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.

### **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 Compass Bank's compliance with all the commitments made to the Board in connection with the proposal as well as all conditions imposed in this order. The conditions and commitments relied on by the Board are deemed to be conditions imposed in writing in

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<sup>24</sup> Compass Bank represents that it completes a full CRA and fair lending impact analysis prior to closing or consolidating any branches in accordance with its branch closing policy.

connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

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

By order of the Board of Governors, effective June 17, 2016.

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 International Banking Act

Banque SYZ SA  
Geneva, Switzerland

*Order Approving the Establishment of a Representative Office*  
*FRB Order No. 2016-09 (June 23, 2016)*

Banque SYZ SA (“Banque SYZ”), a foreign bank within the meaning of the International Banking Act (“IBA”), has applied under section 10(a) of the IBA<sup>1</sup> to establish a representative office in Miami, Florida, following an internal reorganization that involved Banque SYZ’s merger with its subsidiary, Banque SYZ Suisse SA (“SYZ Suisse”), both of Geneva, Switzerland.<sup>2</sup> The IBA provides that a foreign bank must obtain the approval of the Board to establish a representative office in the United States.

Notice of the application, affording interested persons an opportunity to comment, has been published in a newspaper of general circulation in Miami, Florida (*Miami Herald*, December 7, 2015). The time for submitting comments has expired, and the Board has considered all comments received.

Financière SYZ SA (“Financière SYZ”), Geneva, Switzerland, is the parent of Banque SYZ. An overwhelming majority of Financière SYZ’s shares is owned by an individual. Two companies own 5.5 and 5.7 percent of the company’s shares, each. No other shareholder owns 5 percent or more of Financière SYZ’s shares.

Banque SYZ has total assets of approximately \$3.2 billion.<sup>3</sup> Banque SYZ engages in private banking activities, including asset management for private and corporate Swiss and foreign clientele, and secured loan transactions. Outside Switzerland, Banque SYZ has a representative office in Dubai, United Arab Emirates. Banque SYZ has no operations in the United States.<sup>4</sup>

The proposed representative office would act as a liaison between Banque SYZ and its customers. The proposed representative office would also engage in other representational activities, including soliciting banking business for Banque SYZ.<sup>5</sup>

On December 10, 2015, Banque SYZ received approval, pursuant to section 211.24(a)(6) of the Board’s Regulation K, to proceed with the merger of Banque SYZ and SYZ Suisse prior to Board action on Banque SYZ’s application to establish a representative office in

<sup>1</sup> 12 U.S.C. § 3107(a).

<sup>2</sup> Banque SYZ acquired Royal Bank of Canada (Suisse) SA (“RBC Suisse”), Geneva, Switzerland, on August 28, 2015. Until that date, RBC Suisse maintained a representative office in Miami, Florida. Following the acquisition, Banque SYZ renamed RBC Suisse as Banque SYZ Suisse SA.

<sup>3</sup> Asset data are as of December 31, 2015.

<sup>4</sup> Financière SYZ owns SYZ Advisors, Ltd., an investment advisor that does not have an office in the United States but is registered with the U.S. Securities and Exchange Commission and has clients located in the United States.

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

the United States through retention of the SYZ Suisse representative office.<sup>6</sup> The merger of Banque SYZ and SYZ Suisse was completed on December 11, 2015.

Under the IBA and Regulation K, in acting on an application by a foreign bank to establish a representative office, the Board must consider whether (1) the foreign bank has furnished to the Board the information it needs to assess the application adequately, (2) the foreign bank and any foreign bank parent engage directly in the business of banking outside of the United States, and (3) the foreign bank and any foreign bank parent are subject to comprehensive supervision on a consolidated basis by their home country supervisor.<sup>7</sup> The Board also considers additional standards set forth in the IBA and Regulation K.

In the case of an application to establish a representative office, the Board has by rule determined that the supervision standard may be met if the Board determines that the applicant bank is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.<sup>8</sup> This is a lesser standard than the comprehensive, consolidated supervision standard applicable to applications to establish branch or agency offices of a foreign bank. The Board considers the lesser standard sufficient for approval of representative office applications because representative offices may not engage in banking activities. This application has been considered under the lesser standard.

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

With respect to supervision by home country authorities, the Board has considered that Banque SYZ is supervised by the Swiss Financial Market Supervisory Authority (“FINMA”). The Board has previously considered the supervisory regime in Switzerland for financial institutions in connection with applications involving other Swiss banks.<sup>9</sup> Banque SYZ is supervised by FINMA on substantially the same terms and conditions as those other banks. Based on all the facts of record, it has been determined that Banque SYZ is subject to a supervisory framework that is consistent with the activities of the proposed representative office, taking into account the nature of such activities.

The Board has also considered the following additional standards set forth in the IBA and Regulation K: (1) whether the bank’s home country supervisor has consented to the

<sup>6</sup> See Letter dated December 10, 2015, to Bowman Brown, Shutts & Bowen LLP. Consistent with 12 CFR 211.24(a)(6), Banque SYZ provided commitments to the Board not to 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 Banque SYZ’s application to establish a representative office, including, if necessary, a decision to require the termination of the activities of the representative office.

<sup>7</sup> 12 U.S.C. § 3107(a)(2); 12 CFR 211.24(d)(2). In assessing the supervision standard, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which 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 relationships 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.

<sup>8</sup> See 12 CFR 211.24(d)(2). In adopting the regulations governing applications to establish representative offices, the Board noted that “[a] lesser standard applies because representative offices do not conduct a banking business, such as taking deposits or making loans, and therefore present less risk to U.S. customers than do branches or agencies.” 66 *Fed. Reg.* 54365 (October 26, 2001).

<sup>9</sup> See, e.g., *UBS AG/Union Bank of Switzerland*, 84 *Federal Reserve Bulletin* 684 (June 8, 1998); *Credit Suisse*, 85 *Federal Reserve Bulletin* 68 (November 23, 1998); *UBS AG*, 86 *Federal Reserve Bulletin* 69 (November 24, 1999).

establishment of the office; (2) 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; (3) the financial and managerial resources of the bank; and (4) whether the appropriate supervisors in the home country may share information on the bank's operations with the Board.<sup>10</sup> FINMA has no objection to the proposed representative office.

Switzerland 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, Switzerland has enacted laws and regulations to deter money laundering, terrorist financing, and other illicit activities. Money laundering is a criminal offense in Switzerland, and financial institutions are required to establish internal policies, procedures, and systems for the detection and prevention of money laundering throughout their worldwide operations. Banque SYZ has policies and procedures to comply with these laws and regulations, and its operations are monitored by governmental entities responsible for anti-money-laundering compliance.

Banque SYZ appears to have the experience and capacity to support the proposed representative office. In addition, Banque SYZ has established controls and procedures for the proposed representative office to ensure compliance with U.S. law, as well as controls and procedures for its worldwide operations generally. Taking into consideration Banque SYZ's record of operations in its home country, its overall financial resources, and its standing with its home country supervisors, financial and managerial factors are consistent with approval of the proposed representative office.

Banque SYZ 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 providing such information to the Board may be prohibited by law or otherwise, Banque SYZ 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 Banque SYZ has provided adequate assurances of access to any necessary information that the Board may request.

The Board also has considered whether Banque SYZ's proposal would present a risk to the stability of the United States. The proposal would not appear to affect financial stability in the United States. In particular, the absolute and relative size of Banque SYZ in its home country; the scope of Banque SYZ'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 Banque SYZ in its home country do not appear to create significant risk to the financial stability of the United States. Based on these and other factors, financial stability considerations in this proposal are consistent with approval.

On the basis of all the facts of record, and subject to the commitments made by Banque SYZ, Banque SYZ's application to establish the proposed representative office is hereby approved by the Director of the Division of Banking Supervision and Regulation, with the concurrence of the General Counsel, pursuant to authority delegated by the Board.<sup>11</sup>

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<sup>10</sup> See 12 U.S.C. § 3105(d)(3)–(4); 12 CFR 211.24(c)(2).

<sup>11</sup> 12 CFR 265.7(d)(12).

Should any restrictions on access to information on the operations or activities of Banque SYZ and its affiliates subsequently interfere with the Board's ability to obtain information to determine and enforce compliance by Banque SYZ or its affiliates with applicable federal statutes, the Board may require termination of any of Banque SYZ's direct or indirect activities in the United States. Approval of this application also is specifically conditioned on compliance by Banque SYZ with the conditions imposed in this order and the commitments made to the Board in connection with this application.<sup>12</sup> For purposes of this action, these commitments and conditions are deemed to be conditions imposed by the Board in writing in connection with this decision and, as such, may be enforced in proceedings under applicable law.

By order, approved pursuant to authority delegated by the Board, effective June 23, 2016

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

Margaret McCloskey Shanks  
*Deputy Secretary of the Board*

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<sup>12</sup> The Board's authority to approve the establishment of a representative office parallels the continuing authority of the State of Florida to license offices of a foreign bank. The Board's approval of this application does not supplant the authority of the State of Florida and its agent, the Florida Office of Financial Regulation, to license the proposed representative office of Banque SYZ in accordance with any terms and conditions that the Florida Office of Financial Regulation might impose. The Florida Office of Financial Regulation approved Banque SYZ's application to establish the representative office on February 25, 2016.