



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ
GENERAL COUNSEL

March 27, 2017

Mr. Burl Wells Spurlock
President and Chief Executive Officer
First Prestonsburg Bancshares, Inc.
311 North Arnold Avenue
Prestonsburg, Kentucky 41653

Dear Mr. Spurlock:

This is in response to your letter to the Federal Reserve Bank of Cleveland, dated March 16, 2017, and received on March 17, requesting a waiver from an application requirement under the Bank Holding Company Act of 1956, as amended (“BHC Act”),¹ for First Prestonsburg Bancshares, Inc. (“First Prestonsburg”), Prestonsburg, Kentucky, a bank holding company, to acquire First Guaranty Bank, a state nonmember bank, Martin, Kentucky.

The purpose of the proposed transaction is to facilitate the merger of First Guaranty Bank with and into First Prestonsburg’s wholly owned state nonmember bank subsidiary, First Commonwealth Bank of Prestonsburg, Inc. (“First Commonwealth Bank”), Prestonsburg, Kentucky. The transaction would occur as follows: (1) First Prestonsburg would acquire 100 percent of the common stock of First Guaranty Bank; and (2) immediately thereafter, First Guaranty Bank would merge with and into First Commonwealth Bank, with First Commonwealth Bank as the surviving entity (“Bank Merger”). You have indicated that the transaction steps would occur in immediate succession on the same business day and that First Prestonsburg would not hold nor operate First Guaranty Bank as a separate entity.

Section 3 of the BHC Act and the Board’s Regulation Y require the approval of the Board before a bank holding company may acquire direct or indirect ownership or control of more than 5 percent of the voting shares of a bank.² Through the

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842(a); 12 CFR 225.11.

transaction described above, First Prestonsburg would acquire control of First Guaranty Bank. Accordingly, First Prestonsburg would be required to obtain the Board's approval under section 3 of the BHC Act and Regulation Y.

In certain circumstances, however, in order to avoid duplication of regulatory review by federal banking regulators, the Board's rules provide that a bank holding company seeking to acquire shares or control of a bank need not obtain the Board's prior approval. Specifically, section 225.12(d)(2) of the Board's Regulation Y provides that a bank holding company need not obtain the Board's approval if the transaction is subject to review by a federal banking agency under section 18(c) of the Federal Deposit Insurance Act ("the Bank Merger Act"),³ and meets certain other criteria.⁴ Your proposal meets all of the applicable criteria, and First Prestonsburg has provided all necessary information.

The proposed merger of First Guaranty Bank with and into First Commonwealth Bank requires the prior approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act.⁵ In acting on the merger proposal, the FDIC must consider the impact the acquisition would have on competition, the financial and managerial resources and future prospects of the combined organization, the convenience and needs of the communities served by First Guaranty Bank and First Commonwealth Bank, the institutions' records of performance under the Community Reinvestment Act, the institutions' effectiveness in combating money laundering activities, and risks to the stability of the United States banking or financial system.⁶ These criteria are substantially similar to the criteria the Board would consider under section 3 of the BHC Act.⁷

Additionally, at no time would First Guaranty Bank operate as a separate subsidiary of First Prestonsburg. Following the transaction, the separate corporate existence of First Guaranty Bank would cease, and First Commonwealth Bank would continue to operate as a state nonmember bank. Under these circumstances, review of the transaction under section 3 of the BHC Act would be duplicative of the review under the

³ 12 U.S.C. § 1828(c).

⁴ 12 CFR 225.12(d)(2).

⁵ 12 U.S.C. § 1828(c). First Commonwealth Bank filed a Bank Merger Act application dated March 16, 2017, with the FDIC, requesting prior approval of the Bank Merger.

⁶ 12 U.S.C. §§ 1828(c)(5) and (11), 2902(3)(E), 2903(a)(2).

⁷ See 12 U.S.C. § 1842(c); 12 CFR 225.13.

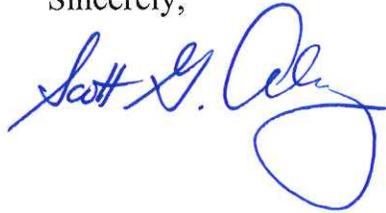
Bank Merger Act.

Based on a review of these and other facts presented, the Legal Division believes that no regulatory purpose would be served by requiring First Prestonsburg to file a formal application under section 3 of the BHC Act. The Legal Division, therefore, would not recommend that the Board take action to require a filing of a formal application by First Prestonsburg in connection with the transaction described above. This opinion is subject to the receipt by First Prestonsburg, First Commonwealth Bank, and First Guaranty Bank of all other necessary regulatory approvals and compliance with any terms and conditions that may be imposed upon approval of the proposal.

This opinion is based on all the facts and representations presented to Federal Reserve staff. Any material change in those facts or representations should be communicated immediately to Federal Reserve staff and may cause this opinion to be reconsidered. This opinion is limited to this proposal and does not apply to any other transaction.

If you have any questions regarding this matter, please contact Keisha Patrick at (202) 452-3559 or Kirin Walsh at (202) 452-3058, of my staff.

Sincerely,



cc: Federal Deposit Insurance Corporation