



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, DC 20551

LEGAL DIVISION

September 26, 2022

Brent McCauley, Esq.  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606

Dear Mr. McCauley:

This is in response to your letter to the Federal Reserve Bank of Kansas City (“Reserve Bank”), dated August 11, 2022, requesting a determination that no filing would be required under the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> for Landmark Bancorp, Inc. (“Landmark”), a financial holding company, and its national bank subsidiary, Landmark National Bank, both of Manhattan, Kansas, to acquire Freedom Bancshares, Inc. (“Freedom”) and its wholly-owned subsidiary state nonmember bank, Freedom Bank, both of Overland Park, Kansas.

The purpose of the proposed transaction is to facilitate the merger of Freedom Bank with and into Landmark National Bank. The transaction would occur as follows: (1) LARK Investment Corporation (“Merger Sub”), a wholly-owned subsidiary of Landmark formed solely for the purpose of facilitating the transaction, would merge with and into Freedom, with Freedom as the surviving entity; (2) LNB Investment Corporation (“LNB Merger Sub”), a wholly-owned subsidiary of Landmark National Bank formed solely for the purpose of facilitating the transaction, would merge with and into Freedom, with Freedom as the surviving entity (“First Interim Merger”); (3) Freedom would merge with and into Landmark National Bank, with Landmark National Bank as the surviving entity (the “Second Interim Merger”); and (4) Freedom Bank would merge with and into Landmark National Bank, with Landmark National Bank as the surviving entity (“Bank Merger”).<sup>2</sup> You have represented that these steps of the

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<sup>1</sup> 12 U.S.C. § 1841 et seq.

<sup>2</sup> Landmark would also acquire Freedom and Freedom Bank for a moment in time as a result of the transaction. By letter dated September 22, 2022, the Reserve Bank, acting

transaction would occur in immediate succession, Freedom and Freedom Bank would exist as wholly-owned subsidiaries of Landmark National Bank only for a moment in time, and Landmark National Bank would never operate either Freedom or Freedom Bank as a separate entity.

Section 3 of the BHC Act and the Board’s Regulation Y require the approval of the Board before any action is taken that causes any company to become a bank holding company.<sup>3</sup> Through the transaction described above, Landmark National Bank would become a bank holding company for a moment in time through its acquisitions of Freedom and Freedom Bank. Accordingly, Landmark National Bank would be required to obtain the Board’s approval under section 3 of the BHC Act and Regulation Y.

In order to avoid duplication of regulatory review by federal banking regulators, however, section 225.12(d)(2) of the Board’s Regulation Y provides that a bank holding company seeking to merge with another bank holding company or acquire control of a bank need not obtain the Board’s prior approval if the transaction is subject to review by a federal banking agency under section 18(c) of the Federal Deposit Insurance Act (“Bank Merger Act”)<sup>4</sup> and meets certain other criteria.<sup>5</sup> Although section 225.12(d)(2) does not apply to transactions that involve a depository institution becoming a bank holding company, your proposal is consistent with the purposes of that section.

The proposed First Interim Merger, Second Interim Merger, and Bank Merger require the prior approval of the Office of the Comptroller of the Currency (“OCC”) under the Bank Merger Act, and the Second Interim Merger also requires the prior approval of the Federal Deposit Insurance Corporation (“FDIC”) under the Bank Merger Act.<sup>6</sup> In reviewing their respective Bank Merger Act applications, the OCC and FDIC each 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 Landmark National Bank and Freedom Bank, the institutions’ records of performance under the Community

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pursuant to authority delegated by the Board, did not object to Landmark’s request for a waiver of the requirement to file an application under section 3 of the BHC Act (12 U.S.C. § 1842) pursuant to section 225.12(d)(2) of the Board’s Regulation Y, 12 CFR 225.12(d)(2). See 12 CFR 265.20(c)(13)(i).

<sup>3</sup> 12 U.S.C. § 1842(a); 12 CFR 225.11.

<sup>4</sup> 12 U.S.C. § 1828(c).

<sup>5</sup> 12 CFR 225.12(d)(2).

<sup>6</sup> 12 U.S.C. § 1828(c). The Bank Merger Act applications were approved by the OCC on September 12, 2022, and by the FDIC on September 15, 2022.

Reinvestment Act, the institutions' effectiveness in combating money laundering activities, and risks to the stability of the United States banking or financial system.<sup>7</sup> These criteria are substantially similar to the criteria that the Board would consider under section 3 of the BHC Act.<sup>8</sup>

At no time would Freedom Bank operate as a separate subsidiary bank of Landmark National Bank. Following the transaction, the separate corporate existences of Freedom and Freedom Bank would cease, and Landmark National Bank would continue to operate as a national bank. Under these circumstances, review of the transaction under section 3 of the BHC Act would be duplicative of the review under the 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 Landmark National Bank to file an application under section 3 of the BHC Act. The Legal Division, therefore, would not recommend that the Board take action to require the filing of an application by Landmark National Bank in connection with the transaction described above. This opinion is subject to the receipt by Landmark, Landmark National Bank, Merger Sub, LNB Merger Sub, Freedom, and Freedom Bank of all other necessary regulatory approvals and compliance with any terms and conditions that may be imposed in connection with those approvals.

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 Evan Hechtman at (202) 263-4810 or Brian Kesten at (202) 452-2993, of the Legal Division staff.

Sincerely,



Charles Gray  
Deputy General Counsel

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<sup>7</sup> 12 U.S.C. §§ 1828(c)(5) & (11), 2902(3)(E), 2903(a)(2).

<sup>8</sup> See 12 U.S.C. § 1842(c); 12 CFR 225.13. Landmark's home state is Kansas, and Freedom Bank is located only in Kansas. See 12 U.S.C. § 1841(o)(4). Section 3(d) of the BHC Act, therefore, does not apply to this transaction. See 12 U.S.C. § 1842(d).

cc: Office of the Comptroller of the Currency  
Federal Deposit Insurance Corporation