



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

LEGAL DIVISION

December 23, 2022

Ms. Ivy Craig
Colorado Branch President
Farmers & Merchants Bank of Colby
240 West 4th Street
Colby, Kansas 67701

Dear Ms. Craig:

This is in response to your letter to the Federal Reserve Bank of Kansas City ("Reserve Bank"), dated December 2, 2022, requesting a determination that no filing would be required under the Bank Holding Company Act of 1956 ("BHC Act"),¹ for Security Bancshares, Inc. ("Security"), Scott City, Kansas, a bank holding company, and its subsidiary state nonmember bank, Farmers & Merchants Bank of Colby ("F&M Bank"), Colby, Kansas, to acquire The Bank of Burlington, Burlington, Colorado, a state member bank.

The purpose of the proposed transaction is to facilitate the merger of The Bank of Burlington with and into F&M Bank. The transaction would occur as follows: (1) F&M Bank would purchase 100 percent of the stock of The Bank of Burlington from its parent bank holding company, Burlington Holdings, Inc., Burlington, Colorado ("Burlington"); and (2) The Bank of Burlington would merge with and into F&M Bank, with F&M Bank as the surviving entity ("Bank Merger").² You have represented that these steps of the transaction would occur in immediate succession on the same day. The Bank of Burlington would exist as a wholly-owned subsidiary of F&M Bank only for a

¹ 12 U.S.C. § 1841 et seq.

² Security would also indirectly acquire The Bank of Burlington for a moment in time as a result of the transaction. By letter dated December 19, 2022, the Reserve Bank, acting pursuant to authority delegated by the Board, did not object to Security'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).

moment in time, and F&M Bank would never operate The Bank of Burlington 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.³ Through the transaction described above, F&M Bank would become a bank holding company for a moment in time through its acquisition of The Bank of Burlington. Accordingly, F&M 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")⁴ and meets certain other criteria.⁵ 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 Bank Merger requires the prior approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act.⁶ In reviewing the Bank Merger Act application, 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 F&M Bank and The Bank of Burlington, 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.⁷ These criteria are substantially similar to the criteria that the Board would consider under section 3 of the BHC Act.⁸

³ 12 U.S.C. § 1842(a); 12 CFR 225.11.

⁴ 12 U.S.C. § 1828(c).

⁵ 12 CFR 225.12(d)(2).

⁶ 12 U.S.C. § 1828(c). The Bank Merger Act application was approved by the FDIC on December 19, 2022.

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

⁸ See 12 U.S.C. § 1842(c); 12 CFR 225.13. Security's home state is Kansas, and The Bank of Burlington is located only in Colorado. See 12 U.S.C. § 1841(o)(4). The acquisition is consistent with section 3(d) of the BHC Act. See 12 U.S.C. § 1842(d).

At no time would The Bank of Burlington operate as a separate subsidiary bank of F&M Bank. Following the transaction, the separate corporate existence of The Bank of Burlington would cease, and F&M 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 Bank Merger Act.

Based on a review of all the facts presented, the Legal Division believes that no regulatory purpose would be served by requiring F&M 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 F&M Bank in connection with the transaction described above. This opinion is subject to the receipt by Security, F&M Bank, Burlington, and The Bank of Burlington 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 Andy Carlson at (216) 213-6658, both of the Legal Division staff.

Sincerely,

A handwritten signature in cursive script that reads "Charles Gray".

Charles Gray
Deputy General Counsel

cc: Federal Deposit Insurance Corporation