



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

LEGAL DIVISION

July 5, 2023

Agata S. Troy, Esq.  
Luse Gorman, PC  
5335 Wisconsin Avenue NW, Suite 780  
Washington, D.C. 20015

Dear Ms. Troy:

This is in response to your letter to the Federal Reserve Bank of Philadelphia (“Reserve Bank”), dated May 5, 2023, requesting a determination that no filing would be required under the Bank Holding Company Act of 1956 (“BHC Act”),<sup>1</sup> for First Bank, Hamilton, New Jersey, a stand-alone state nonmember bank, to acquire Malvern Bancorp, Inc. (“Malvern”), a bank holding company, and its wholly owned bank subsidiary, Malvern Bank NA (“Malvern Bank”), both of Paoli, Pennsylvania.

The purpose of the proposed transaction is to facilitate the merger of Malvern Bank with and into First Bank. The transaction would occur as follows: (1) Malvern would merge with and into FB Merger Subsidiary LLC (“Merger Sub”), a wholly owned subsidiary of First Bank formed for the purpose of facilitating the transaction, with Merger Sub as the surviving entity; and (2) Malvern Bank would merge with and into First Bank, with First Bank as the surviving entity (“Bank Merger”).<sup>2</sup> You have represented that the above transaction steps would occur in immediate succession and that First Bank would never operate Malvern 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

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

<sup>2</sup> You have represented that after consummation of the Bank Merger, Merger Sub would continue to exist for a period of time but would not own or control a depository institution and would not conduct any business activities.

bank holding company.<sup>3</sup> Through the transaction described above, First Bank would become a bank holding company for a moment in time through its acquisition of Malvern Bank. Accordingly, First 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 transaction requires the prior approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act.<sup>6</sup> 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 First Bank and Malvern 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.<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 Malvern Bank operate as a separate subsidiary bank of First Bank. Following the transaction, the separate corporate existence of Malvern Bank would cease, and First Bank would continue to operate as a state nonmember bank.

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<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). First Bank filed two Bank Merger Act applications with the FDIC, dated February 10, 2023, and March 30, 2023, requesting prior approval of the transaction. The FDIC provided the Board with a copy of the applications, which were approved on June 29, 2023.

<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. Malvern Bank is located in Florida, New Jersey, and Pennsylvania, while First Bank's home state is New Jersey. See 12 U.S.C. § 1841(o)(4). The acquisition is consistent with section 3(d) of the BHC Act. See U.S.C. § 1842(d).

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 First 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 First Bank in connection with the transaction described above. This opinion is subject to the receipt by First Bank, Merger Sub, Malvern, and Malvern 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 Derald Seid at (202) 452-2246 or Evan Hechtman at (202) 263-4810, both of the Legal Division staff.

Sincerely,



Charles Gray  
Deputy General Counsel

cc: Federal Deposit Insurance Corporation