FRB Order No. 2016-11
June 28, 2016

FEDERAL RESERVE SYSTEM

Bank of the Ozarks, Inc.
Little Rock, Arkansas

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

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"),[1] has requested the Board's approval under section 3 of the BHC Act[2] 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.[3] 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.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 Federal Register 74105 (November 27, 2015)).[5] 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.

---

[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1842.

[3] 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.

[4] 12 U.S.C. §§ 1843(k) and (*l*); 12 CFR 225.82.

[5] 12 CFR 262.3(b).

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.[6] 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.[7] 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, which represent less than 1 percent of the total deposits of insured depository institutions in that state.[8]

On consummation of this proposal, Ozarks would become the 121st largest depository organization in the United States, with consolidated assets of approximately

---

[6] Asset and deposit data are as of June 30, 2015, unless otherwise noted.

[7] In this context, insured depository institutions include commercial banks, savings and loan associations, and savings banks.

[8] 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.

$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.[9] 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.[10] 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

---

[9] 12 U.S.C. § 1842(d)(1)(A).

[10] 12 U.S.C. § 1842(d)(1)(B).

target bank's home state or in any state in which the acquirer and target have overlapping banking operations.[11]

For purposes of the BHC Act, the home state of Ozarks is Arkansas, and C&S Bank's home state is Georgia.[12] 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")[13] rating. Georgia has a three-year minimum age requirement,[14] 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.

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.

---

[11] 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).

[12] 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.

[13] 12 U.S.C. § 2901 et seq.

[14] See Ga. Code Ann. § 7-1-622(b).

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.[15]

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").[16] 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;[17] the concentration levels of market deposits and the increase in these levels as measured by

[15] 12 U.S.C. § 1842(c)(1).

[16] 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.

[17] 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).

the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[18] 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 measured by the HHI. The change in the HHI would be small, and numerous competitors would remain in the markets.[19]

---

[18] 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.

[19] 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

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

---

HHI for the Atlanta market would increase by one point to 1573, and 86 competitors would remain in the market.

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.[20] 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 addition, 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, risk-management 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.

---

[20] 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.

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.[21]

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.[22] 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

---

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

[22] 12 U.S.C. § 1842(c)(2).

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,[23] 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.[24]

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

---

[23] 12 U.S.C. § 2901(b).

[24] 12 U.S.C. § 2903.

MSA, as reflected by data reported under the Home Mortgage Disclosure Act of 1975 ("HMDA") for 2014.[25] 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.[26]

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.

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

---

[25] 12 U.S.C. § 2801 et seq.

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

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.[27] 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.[28]

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

---

[27] 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.

[28] See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642, 11665 (March 11, 2010).

meet the credit needs of its entire community, including LMI neighborhoods.[29] 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;[30] (4) the institution's community development lending, including the number and amount of

---

[29] 12 U.S.C. § 2906.

[30] 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).

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.[31] 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").[32]

---

[31] 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.

[32] 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.

BOTO received overall ratings of "Low Satisfactory" for the Lending Test, "Outstanding" for the Investment Test, and "High Satisfactory" for the Service Test.[33] 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.

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.

---

[33] 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.

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").[34] 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.[35]

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.

---

[34] 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.

[35] 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.

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 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").[36] 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

---

[36] 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.

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.[37]

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

---

[37] 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.

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."[38]

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.[39] 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.[40]

---

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

[39] Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

[40] For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

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 $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.[41] 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."

---

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

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved.[42] 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

[42] 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, 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.

period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis acting under delegated authority.

By order of the Board of Governors,[43] effective June 28, 2016.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

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