FEDERAL RESERVE SYSTEM

Metcalf Bank
Lee's Summit, Missouri

Order Approving the Acquisition and Establishment of Branches

Metcalf Bank,[1] a state member bank, has requested the Board's approval under section 18(c) of the Federal Deposit Insurance Act[2] ("Bank Merger Act") to acquire certain assets and assume certain liabilities of four branches of The First National Bank of Olathe ("FNB Olathe"), Olathe, Kansas ("Kansas Branches").[3] In addition, Metcalf Bank has applied under section 9 of the Federal Reserve Act ("FRA") to establish and operate branches at the locations of the Kansas Branches.[4]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in local publications in accordance with the Bank Merger Act and the Board's Rules of Procedure.[5] As required by the Bank Merger Act, a report on the competitive effects of the merger was requested from the United States Attorney General, and a copy of the request was provided to the Federal Deposit Insurance Corporation ("FDIC"). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the Bank Merger Act.[6]

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[1] Metcalf Bank is a subsidiary of First National Bancor, Inc. ("FNB"), also of Lee's Summit, which in turn is a subsidiary of Central Bancompany ("Central"), Jefferson City, Missouri. FNB and Central are bank holding companies.

[2] 12 U.S.C. § 1828(c).

[3] The Kansas Branches are located at 7800 College Boulevard and 7960 West 135th Street, both in Overland Park, and 15100 West 67th Street and 6114 Nieman Road, both in Shawnee, all in Kansas.

[4] 12 U.S.C. § 321.

[5] 12 CFR 262.3(b).

[6] Although no comments were received in connection with this application, the Board received comments on Metcalf Bank's record of meeting the convenience and needs of

Central, the parent bank holding company of Metcalf Bank, has total assets of approximately $9.1 billion and operates 13 banks in Missouri, Kansas, Oklahoma, and Illinois.[7] Metcalf Bank, with total assets of $990 million, operates in Missouri and Kansas. In Missouri, Central is the fourth largest depository organization, controlling deposits of approximately $5.8 billion, which represent 4.7 percent of the total amount of deposits of depository organizations in the state ("state deposits").[8] In Kansas, Central is the 38th largest depository organization, controlling deposits of approximately $307.6 million. The Kansas Branches control deposits of $234.1 million. On consummation, Central would become the 21st largest depository organization in Kansas, controlling deposits of approximately $541.7 million, which represent less than 1 percent of state deposits.

Interstate Analysis

Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal Act") authorizes a bank to merge with another bank under certain conditions unless, before June 1, 1997, the home state of one of the banks involved in the transaction adopted a law expressly prohibiting merger transactions involving out-of-state banks.[9] For purposes of the Riegle-Neal Act, the home state of Metcalf Bank is Missouri, and the home state of FNB Olathe is Kansas.[10] Metcalf Bank has provided a copy of its Bank Merger Act application to the relevant state agency and has complied with state law. The proposal also complies with all other requirements of

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its community in connection with an application by Central to acquire Overland Bancorp, Inc. ("Overland") and thereby indirectly acquire Bank of Belton, both of Belton, Missouri. The Board has not acted on that application. The comments regarding Metcalf Bank that were received in connection with the Overland application have also been considered in connection with this proposal.

[7] Asset data are as of June 30, 2010.

[8] Deposit data and state rankings are as of June 30, 2009.

[9] 12 U.S.C. § 1831u.

[10] See 12 U.S.C. § 1831u(a)(4) and (g)(4).

the Riegle-Neal Act.[11] Accordingly, the Riegle-Neal Act authorizes the proposed interstate branch acquisitions.

<u>Competitive Considerations</u>

The Bank Merger Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The act also 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 its probable effect in meeting the convenience and needs of the community to be served.[12]

Metcalf Bank and the Kansas Branches compete directly in the Kansas City, Missouri banking market ("Kansas City banking market").[13] The Board has reviewed carefully the competitive effects of the proposal in this banking market in light

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[11] <u>See</u> 12 U.S.C. § 1831u. Metcalf Bank is adequately capitalized and adequately managed, as defined in the Riegle-Neal Act. The Missouri Division of Finance has indicated that this transaction would comply with applicable Missouri law and on June 22, 2010, indicated that it would be in a position to act favorably on Metcalf Bank's application to establish branches at the locations of the Kansas Branches. There is no filing requirement with Kansas's Office of the State Banking Commissioner when an out-of-state bank acquires a Kansas branch. <u>See</u> Special Kansas Banking Order 1997-2. On consummation of the proposal, Metcalf Bank and its affiliated insured depository institutions would control less than 10 percent of the total amount of deposits in insured depository institutions in the United States and less than 30 percent of the total amount of deposits in insured depository institutions in Kansas. The term "insured depository institutions" includes insured commercial banks, savings banks, and savings associations. All other requirements of section 102 of the Riegle-Neal Act would also be met on consummation of the proposal.

[12] 12 U.S.C. § 1828(c)(5).

[13] Central operates two banks in the Kansas City banking market: Metcalf Bank and First Central Bank, Warrensburg, Missouri. The Kansas City banking market encompasses Cass, Clay, Jackson, Platte, and Ray Counties, Missouri; the towns of Trimble and Holt in Clinton County, Missouri; the towns of Chilhowee, Holden, and Kingsville in Johnson County, Missouri; and Johnson, Leavenworth, and Wyandotte Counties, Kansas.

of all the facts of record, including the number of competitors that would remain and the relative shares of total deposits in insured depository institutions in the Kansas City banking market ("market deposits") that they would control,[14] the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index ("HHI") and the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines"),[15] 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 in the Kansas City banking market. On consummation, the banking market would remain unconcentrated, as measured by the HHI, and numerous competitors would remain in the banking market.[16]

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[14] Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2009, 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 of 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).

[15] 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 recently issued revised Horizontal Merger Guidelines, the DOJ has confirmed that the DOJ Bank Merger Guidelines, which were issued in 1995, were not changed. Press Release, Department of Justice (August 19, 2010), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[16] Central operates the 11th largest depository organization in the market, controlling deposits of approximately $837 million, which represent 2.3 percent of market deposits. Metcalf Bank accounts for $786.8 million of Central's deposits in this market. The Kansas Branches control $234.1 million in deposits, which represents less than 1 percent of market deposits. After consummation, Central would become the 10th largest depository organization in the market, controlling deposits of approximately $1.1 billion,

The DOJ has advised the Board that consummation of the proposal is not likely to have a significant adverse competitive effect in the Kansas City banking market. The Board also has received no objection to the proposal from any federal banking agency.

Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial and Managerial Resources and Future Prospects

In reviewing the proposal under the Bank Merger Act, the Board has also carefully considered the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal and state supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by Metcalf Bank.

In evaluating financial factors in expansion proposals by banking organizations, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

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which represent 3 percent of market deposits. On consummation of the proposal, the HHI would decrease by 1 point to 559 for the Kansas City banking market, and 109 depository organizations would remain in the market.

Metcalf Bank is well capitalized and would remain so on consummation of the proposal. Central, Metcalf Bank's parent holding company, also would remain well capitalized on consummation of the proposal. Based on its review of the record in this case, the Board finds that Metcalf Bank has sufficient financial resources to effect the proposal. As noted, the proposed transaction is structured as an asset purchase and assumption of liabilities. Central will use its existing resources to contribute approximately $25 million to Metcalf Bank to fund the transaction.

The Board also has considered the managerial resources of Metcalf Bank and reviewed the examination records of the bank, including assessments of its management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences with the relevant organizations and the organizations' records of compliance with applicable banking law, including anti-money laundering laws. The Board also has considered Metcalf Bank's plans for implementing the proposal, including the proposed management of the Kansas Branches after consummation.

Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval under the Bank Merger Act.

Convenience and Needs Considerations

In acting on the proposal, the Board also must consider its effects on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[17] 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, and requires the appropriate federal financial supervisory agency to take into account an institution's

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[17] 12 U.S.C. § 2901 et seq.

record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[18]

The Board has considered carefully all the facts of record, including evaluations of the CRA performance records of Metcalf Bank, data reported by Metcalf Bank under the Home Mortgage Disclosure Act ("HMDA")[19] and the CRA, other information provided by the bank, confidential supervisory information, and public comment. Two commenters asserted that Metcalf Bank had not adequately served the credit and investment needs of its LMI communities. Based on the bank's record of lending to small businesses and small farms and the HMDA data reported by the bank in 2008, the commenters contended that Metcalf Bank's percentage of loans in low-income census tracts was not commensurate with the percentage of such tracts in the bank's assessment area and that Metcalf Bank had made an insufficient number of residential, small business, and small farm loans to low-income borrowers. The commenters also expressed concern that Metcalf Bank did not have a sufficient branch presence in low-income census tracts.[20] In addition, the commenters alleged that Metcalf Bank had not served the credit needs of African Americans and had engaged in disparate treatment of African Americans in its mortgage lending activities.

A. CRA Performance Evaluation

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. 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 of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[21]

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[18] 12 U.S.C. § 2903.

[19] 12 U.S.C. § 2801 et seq.

[20] None of the Kansas Branches is in an LMI or minority census tract.

[21] The Interagency Questions and Answers Regarding Community Reinvestment provide that a CRA examination is an important and often controlling factor in the consideration

Metcalf Bank received a "satisfactory" rating at its most recent CRA examination by the Federal Reserve Bank of Kansas City, as of April 13, 2009 ("2009 Examination"). FNB Olathe also received a "satisfactory" rating at its most recent CRA examination by the Office of the Comptroller of the Currency, as of July 6, 2009.

In the 2009 Examination, Metcalf Bank received a "high satisfactory" rating on its lending test and a "low satisfactory" rating on its investment and service tests.[22] Examiners noted that the bank's primary lending focus was commercial loans, which represented approximately 80 percent of its total loan portfolio.[23] They found that Metcalf Bank's lending activity during the evaluation period reflected good responsiveness to the credit needs of its community.[24] Examiners determined that the overall geographic distribution of the bank's HMDA loans reflected an adequate penetration throughout all geographies of the assessment area, including LMI tracts, in light of the economic and demographic aspects of the assessment area and in comparison to the aggregate of lenders' lending data.[25] Examiners noted a number of factors that reasonably limited Metcalf Bank's ability to increase its mortgage lending market share

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of an institution's CRA record. See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11,642 at 11,665 (2010).

[22] The CRA evaluation for Metcalf Bank includes the record of three of Central's subsidiary banks that merged in 2008: Metcalf Bank, Overland Park, Kansas; First National Bank of Missouri ("FNB Missouri"), also in Lee's Summit; and First Kansas Bank and Trust Company ("First Kansas Bank"), Gardner, Kansas. On April 24, 2008, FNB Missouri merged with Metcalf Bank, and on June 21, 2008, First Kansas Bank merged with Metcalf Bank. On April 18, 2009, Metcalf Bank acquired American Sterling Bank, Sugar Creek, Missouri, a failed federal savings bank, from the FDIC as receiver.

[23] Metcalf Bank originated less than 1 percent of total HMDA loans originated by all financial institutions in its assessment area.

[24] The evaluation period for Metcalf Bank was from October 18, 2006, to December 31, 2008; for FNB Missouri from February 24, 2003, to December 31, 2008; and for First Kansas Bank from December 18, 2007, to December 31, 2008.

[25] The lending data of the aggregate of lenders represent the cumulative lending for all financial institutions that reported HMDA data in a particular market.

in the LMI geographies, including the small percentage of LMI tracts in the bank's assessment area, the lack of affordable housing in the LMI census tracts, the distance of the bank's branches from LMI tracts, and the strong competition in Jackson County, Missouri, from numerous other institutions. In addition, examiners noted factors in LMI census tracts that contributed to lower demand in the bank's assessment area for mortgage and related home loans in those areas, including a low percentage of owner-occupied units, a high percentage of rental units, a large concentration of families below the poverty line, and high unemployment rates.

In the 2009 Examination, examiners considered the geographic distribution of Metcalf Bank's small business loans,[26] which represent the largest percentage of the bank's lending activity, to be good and found that the distribution compared favorably with other lenders in the assessment area. The examiners found that the bank's ability to make small business loans in low-income tracts was limited, in part, because of the low percentage of businesses in those tracts and competition from other institutions.

In addition, examiners found that Metcalf Bank made a high level of qualified community development loans during the evaluation period, including loans targeted to affordable housing and community development projects to help revitalize and stabilize LMI areas. For example, Metcalf Bank made loans to a community development corporation that focuses on LMI neighborhood revitalization and improvements in housing availability in LMI areas through home repair and rehabilitation. Metcalf Bank's community development lending during the evaluation period totaled approximately $13.5 million. Examiners also determined that Metcalf Bank's level of community development investments during the evaluation period was adequate. They noted that the bank made many charitable contributions, the majority of which were to organizations that sponsor community services primarily for LMI individuals or support affordable housing projects.

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[26] In this context, "small business loans" are business loans that have an original amount of $1 million or less.

Under the service test, examiners found that the bank's delivery systems were accessible to geographies and individuals of different income levels. Examiners noted that Metcalf Bank's current branch network, which includes 19 branches in its assessment area, resulted from the merger of three subsidiary banks of Central in 2008. Metcalf Bank also acquired a failed savings bank in 2009. Ten percent of the bank's branches were in moderate-income tracts, and the bank had no branches in low-income tracts.[27] Examiners noted that, although none of the pre-merger banks had branches in the central area of Kansas City, where the substantial majority of LMI census tracts were located, each bank had a long history of serving the banking needs of its respective communities. They also found that the hours of operations and services offered by Metcalf Bank's branches did not vary in a way that inconvenienced portions of the assessment area, particularly in LMI geographies or for LMI individuals. In addition, examiners noted favorably the bank's community development service activities with organizations that focused primarily on affordable housing and economic development.

B. HMDA Data, Fair Lending Records, and Other Issues

The Board has carefully considered the HMDA data and fair lending records of Metcalf Bank, including those data and records for the institutions that merged to form the bank in 2008, in light of public comments. Commenters alleged, based on 2008 HMDA data, disparate treatment of African Americans by Metcalf Bank involving home mortgage loan originations.[28] The Board's consideration of HMDA-related

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[27] The commenters also requested that the Board require Metcalf Bank to open at least one branch in an LMI or minority census tract. The Board consistently has stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments. See, e.g., The PNC Financial Services Group, Inc., 94 Federal Reserve Bulletin C38 (2008); Wachovia Corporation, 91 Federal Reserve Bulletin 77 (2005). The Board focuses on the existing CRA and fair lending performance and compliance records of an applicant and the programs that an applicant has in place to serve the credit needs of its assessment area at the time the Board reviews a proposal under the convenience and needs factor.

[28] The commenters also expressed concern that Metcalf Bank received only a few applications from African Americans, noting that the percentage of their residential

comments included a review of 2007, 2008, and preliminary 2009 HMDA data reported by Metcalf Bank and the institutions that merged into the bank.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not Metcalf Bank is excluding any group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[29] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance with fair lending laws by Metcalf Bank and the CRA performance record of Metcalf Bank discussed above. In particular, examiners did not find any evidence that Metcalf Bank engaged in illegal discrimination or in any other illegal credit practices. Examiners noted that Metcalf Bank's ability to originate HMDA loans to minority communities in its assessment area

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mortgage loan applications was significantly less than the population of African Americans within the bank's assessment area.

[29] The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

was limited by the demographics of minority census tracts[30] (particularly in Jackson County), including the relatively low availability of owner-occupied housing, the high number of rental and vacant properties, and the downturn in the economy.

The record indicates that Metcalf Bank has taken steps and developed programs to ensure compliance with all fair lending and other consumer protection laws and regulations. Metcalf Bank has an internal audit program, including comprehensive fair lending reviews on a continuing basis, to ensure that all applicants are treated fairly and consistently under prudent underwriting standards and industry guidelines. Additionally, Metcalf Bank has a designated compliance officer dedicated to ensuring the bank's fair lending compliance. Metcalf Bank's compliance officer, together with its management, completes an annual compliance risk assessment and participates in compliance monitoring projects, including a project to monitor bank compliance with fair lending. Metcalf Bank hires an independent party to perform the fair lending compliance project.

Since the last examinations of Metcalf Bank, the bank has continued to make efforts to reach and serve the needs of the minority and LMI communities in its assessment area. The bank has enhanced its marketing efforts by increasing its advertising on public transportation and in local publications focused on serving minorities; investing more than $700,000 in targeted mortgage-backed securities in which all mortgages in the pool are to LMI individuals in the bank's assessment area; and donating funds to support a small-dollar loan program/payday loan alternative initiative, which provides an alternative source of short-term lending, primarily to LMI individuals.

C. Conclusion on Convenience and Needs Considerations

The Board has considered carefully the CRA performance, HMDA data, and fair lending records of Metcalf Bank in light of all public comments received. The Board also has considered carefully all facts of record, including the CRA performance evaluations of the institutions involved, confidential supervisory information, and

[30] For purposes of this HMDA analysis, a minority census tract is a census tract with a minority population of 51 percent or more.

information provided by Metcalf Bank on the actions and programs it has implemented to meet the credit needs of all its communities. As noted above, Metcalf Bank is the result of a recent merger of three relatively small affiliated banks and a failed savings bank. Based on the locations and sizes of the individual institutions before to the merger and the established efforts by Metcalf Bank since the merger, the Board believes that, on balance, the current record of performance of Metcalf Bank in meeting the convenience and needs of its communities is consistent with approval of this proposal. The Board also notes that the proposal would provide customers of the Kansas Branches with a broader array of products and services, including expanded options for loans and additional branch locations.

Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

The changes at Metcalf Bank, however, also reflect an opportunity for Metcalf Bank to continue to improve its lending and outreach efforts to residents in LMI communities and minority borrowers in its entire assessment area. Metcalf Bank has outlined several initiatives designed to enable the bank to increase its lending to minority and LMI communities. The bank plans to expand further its specialized advertising to minority and LMI applicants; increase the number of minority and LMI loan applicants by developing more effective systems to track and measure its success in obtaining loan applications from those applicants; and increase community outreach efforts by partnering with organizations that have close ties to minority populations. The Federal Reserve System will continue to monitor and evaluate the lending performance of Metcalf Bank as part of the supervisory process, including assessments of its performance in subsequent examinations.

Other Considerations

Metcalf Bank also has applied under section 9 of the FRA to establish and operate branches at the locations of the Kansas Branches. The Board has assessed the factors it is required to consider when reviewing an application under section 9 of the FRA and finds those factors to be consistent with approval.[31]

Conclusion

Based on the foregoing and all facts of record, the Board has determined that the applications should be, and hereby are, approved. 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 Bank Merger Act and the FRA. The Board's approval is specifically conditioned on compliance by Metcalf Bank with the conditions imposed in this order, the commitments made to the Board in connection with the applications, and receipt of all other regulatory approvals. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection

[31] 12 U.S.C. § 322; 12 CFR 208.6(b).

with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transactions may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Kansas City, acting pursuant to delegated authority.

By order of the Board of Governors,[32] effective September 2, 2010.

(signed)

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Robert deV. Frierson
Deputy Secretary of the Board

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[32] Voting for this action: Chairman Bernanke and Governors Kohn,* Warsh, Duke, and Tarullo.

* Governor Kohn voted before his departure from the Board on September 1, 2010.