

FEDERAL RESERVE SYSTEM

Old National Bancorp  
Evansville, Indiana

Order Approving the Merger of Bank Holding Companies

Old National Bancorp (“Old National”), Evansville, Indiana, has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)<sup>1</sup> to merge with United Bancorp, Inc. (“United”), and thereby indirectly acquire its subsidiary bank, United Bank & Trust (“United Bank”), both of Ann Arbor, Michigan. Immediately following the proposed merger, United Bank would be merged into Old National’s subsidiary bank, Old National Bank, Evansville.<sup>2</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (79 Federal Register 12194 (2014)).<sup>3</sup> 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.

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<sup>1</sup> 12 U.S.C. § 1842.

<sup>2</sup> The merger of United Bank into Old National Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c).

<sup>3</sup> 12 CFR 262.3(b).

Old National, with consolidated assets of approximately \$10.3 billion, is the 101st largest insured depository organization in the United States,<sup>4</sup> controlling approximately \$7.8 billion in deposits. Old National controls Old National Bank, which operates in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National Bank is the 26th largest insured depository institution in Michigan, controlling approximately \$606 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

United, with consolidated assets of approximately \$899 million, is the 745th largest insured depository organization in the United States,<sup>5</sup> controlling approximately \$790 million in deposits. United controls United Bank, which operates only in Michigan. United Bank is the 23rd largest insured depository institution in Michigan, controlling approximately \$800 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.<sup>6</sup>

On consummation of this proposal, Old National would become the 98th largest depository organization in the United States, with consolidated assets of approximately \$11.2 billion, which represent less than 1 percent of the total amount of assets of insured depository institutions in the United States. Old National would have total deposits of approximately \$8.6 billion. In Michigan,

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<sup>4</sup> Asset and nationwide deposit-ranking data are as of December 31, 2013, and have been updated for mergers involving parties to this proposal that have been consummated through April 25, 2014.

<sup>5</sup> Asset and nationwide deposit-ranking data are as of December 31, 2013. As of March, 31, 2014, United had consolidated assets of approximately \$922 million.

<sup>6</sup> All Michigan statewide and market-level deposit data are as of June 30, 2013, and have been updated for mergers involving parties to this proposal that have been consummated through April 25, 2014. In this context, insured depository institutions include commercial banks, savings associations, cooperative banks, industrial banks, and savings banks.

Old National would become the 15th largest banking organization, controlling approximately \$1.4 billion in deposits, 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 imposes certain requirements on interstate transactions. Section 3(d) generally provides that the Board may approve an application by a bank holding company that is well capitalized and well managed to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.<sup>7</sup> However, this section further provides that 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 that has not been in existence for the lesser of the state statutory minimum period of time or five years.<sup>8</sup> The Board also must take into account the record of performance of the acquiring bank under the Community Reinvestment Act (“CRA”)<sup>9</sup> and applicable state community reinvestment laws.<sup>10</sup> In addition, the Board may not approve an application by a bank holding company to acquire an insured depository institution if the home state of such insured depository institution is a state other than the home state of the bank holding company and the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States.<sup>11</sup> The Board also may not approve an application if the combined

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<sup>7</sup> 12 U.S.C. § 1842(d)(1)(A).

<sup>8</sup> 12 U.S.C. § 1842(d)(1)(B).

<sup>9</sup> 12 U.S.C. § 2901 *et seq.*

<sup>10</sup> 12 U.S.C. § 1842(d)(3).

<sup>11</sup> 12 U.S.C. § 1842(d)(2)(A).

organization would control 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.<sup>12</sup>

For purposes of the BHC Act, the home state of Old National is Indiana, and United's home state is Michigan.<sup>13</sup> Old National is well capitalized and well managed under applicable law. Michigan has no minimum age requirement and United Bank has been in existence for more than five years.

Based on the latest available data reported by all insured depository institutions, the total amount of consolidated deposits of insured depository institutions in the United States is \$11.0 trillion. On consummation of the proposed transaction, Old National 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 less than 30 percent of the total amount of deposits of insured depository institutions in Michigan, the only state in which Old National and United have overlapping banking operations. The Board has taken into account Old National's record of performance under the CRA and determined that it does not prohibit the Board from approving the

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<sup>12</sup> 12 U.S.C. § 1842(d)(2)(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).

<sup>13</sup> 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.

proposal. Accordingly, in light of all the facts of record, the Board is not prohibited from approving the proposal under section 3(d) of the BHC Act.

### 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 any attempt to monopolize the business of banking in any relevant market. The BHC 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 the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>14</sup> Old National Bank and United Bank compete directly only in the Lenawee, Michigan, banking market (the “Lenawee banking market”).<sup>15</sup>

The Board has considered the competitive effects of this proposal on the Lenawee banking market in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking market; the relative shares of total deposits in insured depository institutions in the market (“market deposits”) controlled by Old National and United;<sup>16</sup> the

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<sup>14</sup> 12 U.S.C. § 1842(c)(1).

<sup>15</sup> The Lenawee banking market is defined as Lenawee County, Michigan. Deposit, market share, and ranking data for the market are all as of June 30, 2013.

<sup>16</sup> Deposit and market share data are as of June 30, 2013, updated to reflect mergers involving parties to this proposal which have been consummated through April 25, 2014 and, unless otherwise noted, 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); and National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift

concentration levels of market deposits and the increase in those levels, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);<sup>17</sup> and other characteristics of the market.

In the Lenawee banking market, Old National Bank is the seventh largest depository institution, controlling approximately \$32 million in deposits, which represent approximately 2.8 percent of market deposits. United Bank is the largest depository institution in the market, controlling approximately \$396 million in deposits, which represent approximately 34.4 percent of market deposits. On consummation, Old National Bank would become the largest depository institution in the market, controlling approximately \$428 million in deposits, and its pro forma market share would be approximately 37.2 percent. The HHI would increase by 191 points, from 1877 to 2068.

The Board has considered factors that mitigate the competitive effects of the proposal in the Lenawee banking market.<sup>18</sup> First, a bank made a de novo

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deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

<sup>17</sup> 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 (see Press Release, Department of Justice (August 19, 2010), [www.justice.gov/opa/pr/2010/August/10-at-938.html](http://www.justice.gov/opa/pr/2010/August/10-at-938.html)), the DOJ has confirmed that its DOJ Bank Merger Guidelines, which were issued in 1995, were not modified.

<sup>18</sup> The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in, and resulting level of,

entry into the market by opening a branch in 2012, suggesting that the market may be attractive for future entry. Second, there are two other competitors in the Lenawee banking market with market shares over 10 percent,<sup>19</sup> and five other competitors with market shares over 5 percent. The total number of institutions with market shares over 5 percent in the Lenawee banking market indicates a relatively balanced market structure in which many institutions have a strong competitive presence in the market and are able to exert competitive pressure on the largest firm in the market.<sup>20</sup> Accordingly, the Board has concluded that these factors mitigate, in part, the potential effects of the proposal on the Lenawee banking market.

The DOJ has conducted a detailed review of the potential competitive effects of the proposal and advised the Board that it does not believe that consummation of the proposal is likely to 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

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concentration in a banking market. See NationsBank Corp., 84 Federal Reserve Bulletin 129 (1998).

<sup>19</sup> One of these competitors has an actual market share over 20 percent in the Lenawee banking market. However, this institution is a credit union and is less active in commercial lending, so its market deposits have been weighted at 50 percent.

<sup>20</sup> In its review of the Lenawee banking market, the Board included several thrifts and credit unions as market competitors. One thrift was given a 100 percent weighting rather than the customary 50 percent, because its ratio of commercial and industrial loans to total assets was above the national average for bank holding companies. Two credit unions were included in the calculations at the customary 50 percent weight.

competition or on the concentration of resources in the Lenawee banking market or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

### Financial, Managerial, and Other Supervisory Considerations

In evaluating financial factors in expansionary proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the combined organization to absorb the costs of the proposal and the proposed integration of the operations of the institutions. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. Further, the Board has considered the future prospects of the organizations involved in the proposal in light of their financial and managerial resources and the proposed business plan.

The Board has considered the financial factors of the proposal. Old National and Old National Bank are both well capitalized and would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger, structured as a cash and share exchange.<sup>21</sup> The asset

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<sup>21</sup> As part of the proposed transaction, each share of United common stock would be canceled and converted into a right to receive cash and Old National common stock based on an exchange ratio.



quality, earnings, and liquidity of Old National Bank and United Bank are consistent with approval, and Old National appears to have adequate resources to absorb the costs of the proposal and to complete the integration of the institutions' operations. Based on its review of the record, the Board finds that the organization has sufficient financial resources to effect the proposal.

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 Old National, United, and their subsidiary depository institutions, including assessments of their management, risk management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant bank supervisory agencies with the organizations and their records of compliance with applicable banking and anti-money-laundering laws.

Old National, United, and their subsidiary depository institutions are each considered to be well managed. Old National's existing risk management program and its directorate and senior management are considered to be satisfactory. The directors and senior executive officers of Old National have substantial knowledge of and experience in the banking and financial services sectors.

The Board also has considered Old National's plans for implementing the proposal. Old National is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. Old National would implement its risk management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Old National's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner. Furthermore, Old National has demonstrated a record of

successfully integrating other banking organizations into its operations and risk management systems after acquisitions.

Old National's supervisory record, managerial and operational resources, and plans for operating the combined institution after consummation provide a reasonable basis to conclude that managerial factors are consistent with approval. Based on all the facts of record, the Board has concluded 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 Old National and United in combatting money laundering activities, are consistent with approval.<sup>22</sup>

#### Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant depository institutions under the CRA.<sup>23</sup> 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,<sup>24</sup> and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of

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<sup>22</sup> On June 4, 2012, Old National Bank entered into a stipulation and consent order with the OCC relating to its Bank Secrecy Act/anti-money-laundering compliance program. Old National Bank, OCC Order No. 2012-126 (June 4, 2012). On January 14, 2014, the OCC lifted its order after verifying compliance with the order.

<sup>23</sup> 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 et seq.

<sup>24</sup> 12 U.S.C. § 2901(b).

meeting the credit needs of its entire community, including low- and moderate-income (“LMI”) neighborhoods, in evaluating bank expansionary proposals.<sup>25</sup>

The Board has considered all the facts of record, including reports of examination of the CRA performance of Old National Bank and United Bank, data reported by Old National Bank and United Bank under the Home Mortgage Disclosure Act (“HMDA”),<sup>26</sup> other information provided by Old National, confidential supervisory information, and the public comment received on the proposal. The Board received one comment that objected to the proposal on the basis of Old National’s and United’s fair lending records as reflected in 2012 HMDA data.

#### A. Records of Performance Under the CRA

As provided in the CRA, the Board evaluates an institution’s performance record in light of examinations by the appropriate federal supervisors of the CRA performance records of the relevant institutions.<sup>27</sup> The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution’s record of meeting the credit needs of its entire community, including LMI neighborhoods.<sup>28</sup> 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.

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<sup>25</sup> 12 U.S.C. § 2903.

<sup>26</sup> 12 U.S.C. § 2801 *et seq.*

<sup>27</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642, 11665 (2010).

<sup>28</sup> 12 U.S.C. § 2906.

*CRA Performance of Old National Bank*

Old National Bank was assigned an overall “outstanding” rating at its most recent CRA performance evaluation by the OCC in December 2012 (“Old National Bank Evaluation”). Old National Bank received an “outstanding” rating for the Lending Test and “high satisfactory” ratings for both the Investment Test and the Service Test.<sup>29</sup> In addition to the overall “outstanding” rating that Old National Bank received, the bank received separate overall “outstanding” or “satisfactory” ratings in each multistate metropolitan area and state reviewed.<sup>30</sup>

As described in the Old National Bank Evaluation, OCC examiners found that the bank’s overall lending activity was excellent. The bank originated a significant majority of loans inside its assessment areas and had an excellent overall record of lending to borrowers of different income levels. Examiners noted that the bank had an excellent record of lending to home mortgage borrowers of different income levels, while its distribution of loans to businesses and farms with different revenue sizes was good. Further, Old National Bank’s overall geographic distribution of loans was adequate. Specifically, the bank’s geographic distribution of small loans to businesses was good, while its geographic distribution of mortgage loans and small loans to farms was adequate. In addition, examiners found no evidence of discriminatory or other illegal credit practices.

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<sup>29</sup> The evaluation period for the Old National Bank Evaluation was July 1, 2008, through December 31, 2012.

<sup>30</sup> The Old National Bank Evaluation included full-scope reviews of at least one assessment area within each state where Old National Bank had an office and of multistate metropolitan areas where Old National Bank operated branches in at least two states. The states reviewed were Illinois, Indiana, Kentucky, and Ohio, and the multistate metropolitan areas reviewed were the Evansville (Indiana-Kentucky) and Louisville (Kentucky-Indiana) metropolitan areas.

In evaluating the Investment Test, OCC examiners found that Old National Bank had an overall good level of qualified community development investments that were highly responsive to community needs. Examiners highlighted numerous CRA-qualified investments that the bank had made, including donations to organizations with a community development focus. The bank also participated in various CRA-qualified investment vehicles. For the current CRA examination cycle, which began January 1, 2013, Old National has indicated that Old National Bank increased its corporate community development investment goal from \$37.5 million to \$87.5 million, an increase of 133 percent.

In evaluating the Service Test, examiners noted that branches were accessible to geographies and individuals of different income levels. Examiners also noted that Old National Bank's opening and closing of branches had not adversely affected the accessibility of its delivery systems to LMI geographies or LMI individuals. Further, examiners highlighted that the institution provided a relatively high level of community development services.

#### *CRA Performance of United Bank*

United Bank was assigned an overall "satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC") in June 2011 ("United Bank Evaluation"). United Bank received a "high satisfactory" rating for each of the Lending Test, Investment Test, and the Service Test.<sup>31</sup> In evaluating the Lending Test, FDIC examiners concluded that United Bank's lending levels reflected good responsiveness to its assessment area's credit needs. Examiners found that the majority of the bank's loans were originated in

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<sup>31</sup> The United Bank Evaluation was conducted using Large Bank CRA evaluation procedures in United Bank's single assessment area of Lenawee, Washtenaw, and Monroe counties, all in Michigan. Examiners reviewed loan data reported by United Bank from January 1, 2009, to March 31, 2011.

the overall assessment area, and the geographic distribution of its loans was adequate. Examiners also found that United Bank made a relatively high level of community development loans, used innovative and flexible lending practices to serve the credit needs of its assessment area, and that its level of community development activities represented very good responsiveness to community credit needs in its assessment area. In evaluating the Investment Test, examiners found that the bank had a significant level of qualified community development investments and donations in its assessment area, particularly in Lenawee County. In evaluating the Service Test, examiners noted that United Bank's branch and ATM network provided access to all portions of its assessment area and that the bank provided a high level of community development services.

#### B. Fair Lending and Other Consumer Protection Laws

The Board has considered the records of Old National Bank and United Bank in complying with fair lending and other consumer protection laws. As part of this consideration, the Board reviewed the Old National Bank Evaluation and the United Bank Evaluation, assessed Old National Bank's and United Bank's HMDA data, and considered the comment on the application as well as other agencies' views on Old National Bank's record of performance under fair lending laws. The Board also considered Old National Bank's fair lending policies and procedures.

##### *Analysis of HMDA Data and Branch Closings*

The Board analyzed Old National Bank's and United Bank's 2012 HMDA data, the most recent publicly available, as well as preliminary 2013 HMDA data. The Board analyzed data related to all HMDA-reportable loans to develop a view of the bank's overall lending patterns, as well as the subset of those data related specifically to the loan products that composed the subject of the

public comment received on the proposal, including conventional home purchase loans; Federal Housing Administration (“FHA”), Farm Service Agency/Rural Housing Service (“FSA/RHS”), and Veteran Affairs (“VA”) home purchase loans; home improvement loans; and refinance loans. The Board analyzed each bank’s combined assessment areas and the specific market areas addressed in the public comment (Indianapolis, Evansville, and Fort Wayne, Indiana MSAs; and the Ann Arbor, Michigan MSA). Within those data sets, the Board focused its review on data related to conventional home purchase loans, FHA, FSA/RHS, and VA home purchase loans, refinance loans, and home improvement loans made or denied to borrowers of the races and ethnicities highlighted by the public comment, i.e., African Americans and Hispanics.

*Old National Bank’s HMDA Data and Branch Closings*

The commenter expressed concerns that Old National Bank was not meeting the credit needs of minority individuals in several communities served by the bank, based on 2012 HMDA data. In particular, the commenter alleged that Old National Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans; FHA, FSA/RHS, and VA home purchase loans; refinance loans; and home improvement loans in the Indianapolis, Evansville, and Fort Wayne, Indiana MSAs. The commenter also asserted that Old National Bank disproportionately denied applications by Hispanic applicants in each of these MSAs, suggesting a pattern of denial rate disparities.<sup>32</sup>

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<sup>32</sup> The allegations made by the commenter regarding Old National’s fair lending record are identical to those made by the same commenter in connection with Old National’s application to merge with Tower Financial Corporation (“Tower”), Fort Wayne, Indiana. The Board considered those allegations and approved that proposal. See Old National Bancorp, FRB Order No. 2014-6 (April 7, 2014).

The Board's analysis of HMDA data for conventional home purchase loans; FHA, FSA/RHS, and VA home purchase loans; refinance loans; and home improvement loans by Old National Bank in its combined assessment areas, as well as in the Indianapolis, Evansville, and Fort Wayne MSAs individually, did not show any significant differences between Old National Bank's lending and the aggregate lending for 2012 and 2013.<sup>33</sup> The Board's review confirmed the levels of lending by Old National Bank to African American and Hispanic borrowers and denial disparity ratios noted by the commenter.

The Board is concerned when HMDA data for an institution indicate lending disparities and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that are consistent with safe and sound lending but also provide equal access to credit by creditworthy applicants, regardless of their race or ethnicity. Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, HMDA data alone do not provide a sufficient basis on which to conclude whether the bank excluded or denied credit to any group on a prohibited basis.<sup>34</sup> Fully evaluating a

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<sup>33</sup> Aggregate lending is defined as the number of loans originated and purchased by all reporting lenders in specified income categories as a percentage of the aggregate number of loans originated and purchased by all reporting lenders in the metropolitan or assessment area. In this context, aggregate lending is considered an indicator of the lending opportunities in the geographic area in which the bank is located.

<sup>34</sup> 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 any applicant's creditworthiness. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (the reasons most frequently cited for a credit denial or higher credit cost) are not always available from HMDA data.



bank's compliance with fair lending laws and regulations would require a thorough review of the bank's application and underwriting policies and procedures, as well as access to information contained in the application files, to determine whether the observed lending disparities persist after taking into account legitimate underwriting factors.

The Board has consulted with, and placed great emphasis on the views of, the OCC regarding its evaluation of Old National Bank's compliance with fair lending laws and regulations. In its recent Old National Bank CRA Performance Evaluation, the OCC reported that it did not find evidence of discriminatory or other illegal credit practices. In addition, in November 2012 and November 2013, the OCC conducted targeted examinations of Old National Bank's risk management program for fair lending compliance, in which it assessed Old National Bank's fair lending policies, procedures, and practices, and these targeted examinations did not result in any findings of discrimination relating to Old National Bank's fair lending policies and procedures or to underwriting decisions by the bank's management.

With respect to the specific HMDA data on home purchase and home improvement loans cited by the commenter, Old National provided information reflecting nondiscriminatory reasons for individual lending decisions (i.e., credit history, inadequate collateral, and debt-to-income ratio). Old National also provided the Board with detailed information on Old National Bank's training, marketing, advertising, and underwriting guidelines reflecting its stated commitment to the prevention of prescreening, discouragement, and exclusion of credit applications on a prohibited basis.

The commenter also alleged that Old National has a business strategy of closing branches and reducing financial services, resulting in inconvenience to

local communities.<sup>35</sup> The Board analyzed Old National Bank's current branch distribution and believes it is readily accessible to LMI geographies and individuals in the bank's assessment areas. Twenty-eight percent of Old National Bank's branches are located in LMI census tracts.<sup>36</sup> According to 2010 census data, the percentage of the population in LMI geographies within Old National Bank's assessment areas was 27 percent. As such, the percentage of Old National Bank branches in LMI geographies slightly exceeds the percentage of the population in LMI geographies within the Old National Bank assessment areas.

Old National has stated that Old National Bank does not intend to close any branches in connection with the proposed transaction. Although the bank closed several branches in recent years, the bank has represented that the decisions were based on profitability analysis and proximity to other branches and that community impact was assessed prior to all closings. Further, the Board has considered that federal banking law provides a specific mechanism for addressing branch closings. Federal law requires an insured depository institution to provide notice to the public and to the appropriate federal supervisory agency before closing a branch.<sup>37</sup> The Board has reviewed Old National Bank's branch closing

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<sup>35</sup> The commenter further alleged that Old National has been closing branches for the purpose of keeping its total assets slightly below \$10 billion to avoid increased regulatory burden under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The Board notes that Old National already has more than \$10 billion in total assets, following the acquisition of Tower. See Old National Bancorp, FRB Order No. 2014-6 (April 7, 2014).

<sup>36</sup> Branch data are as of May 1, 2014, and include branches acquired by Old National through its acquisition of Tower in April 2014.

<sup>37</sup> Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1), as implemented by the Joint Policy Statement Regarding Branch Closings (64 Federal Register 34844 (1999)), requires that a bank provide the public with at least 30 days' notice, and the appropriate federal supervisory agency with at least 90 days' notice, before the date of a proposed branch closing. The bank also is

policy and notes that the OCC will continue to review Old National Bank's branch closing record in the course of conducting CRA performance evaluations.

*Old National's Fair Lending Program*

Old National has instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. The company's legal and compliance risk management program includes written policies outlining the bank's responsibility for compliance with fair lending laws and regulations, fair lending officers serving within each of the bank's lending departments, and required annual fair lending training for applicable staff and the board of directors. Old National also has a centralized underwriting procedure, an automated application process, a second review process, a documented exception process, and a standard pricing sheet.

In addition, fair lending reviews are conducted quarterly of individual business units, and comprehensive corporate reviews are performed annually to ensure compliance with the bank's underwriting and pricing procedures and with fair lending laws. The reviews utilize HMDA and non-HMDA data and analyze any fair lending complaints the institution receive. Further, the Compliance Department conducts quarterly fair lending testing and monitoring, including analysis of policies and procedures, reviews of loan and application data, monitoring of exceptions and overrides, and reviews of new products and initiatives. Old National's risk management systems and its policies and procedures for assuring compliance with fair lending laws would be implemented at the combined organization.

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required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

Old National Bank represents that it provides annual fair lending training to all employees involved in any aspect of the bank's credit transactions. Old National also states that it conducts ongoing monitoring and analysis of loan data, policies, and consumer complaints to ensure compliance with fair lending regulations.

*United Bank's HMDA Data*

The commenter also expressed concerns that United Bank was not meeting the credit needs of minority individuals in the Ann Arbor, Michigan MSA, based on 2012 HMDA data. In particular, the commenter alleged that United Bank originated more loans to whites than to African Americans or Hispanics across a range of loan products, including conventional home purchase loans and refinance loans, in the Ann Arbor MSA. The commenter also asserted that United Bank disproportionately denied applications by Hispanic applicants in the MSA, suggesting a pattern of denial-rate disparities.

In general, the Board's review confirmed the levels of lending by United Bank to African American and Hispanic borrowers and denial-disparity ratios noted by the commenter.<sup>38</sup> However, the Board's analysis of HMDA data for conventional home purchase loans; FHA, FSA/RHS, and VA home purchase loans; refinance loans; and home improvement loans by United Bank in its combined assessment areas, as well as in the Ann Arbor MSA individually, did not show any significant differences between United Bank's lending and the aggregate lending for 2012 and 2013. In addition, in the United Bank Evaluation, the FDIC reported that it did not find evidence of discriminatory or other illegal credit

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<sup>38</sup> The Board notes, however, that United Bank reported originating six refinance loans to African Americans in 2012, not two as stated by the commenter.

practices. Old National represents that its fair lending program will be implemented across the combined organization.

C. Additional Information on Convenience and Needs of Communities to Be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.

Old National represents that the proposal would provide opportunities to achieve various operational efficiencies and economies of scale, which would benefit current and future customers of the combined organization through more efficient and cost-effective banking services. Old National asserts that the transaction has the potential to benefit all aspects of United's operations, particularly its lending functions, asset and liability management, and data processing capabilities. Old National also states that the combined organization's larger lending limit would allow Old National to better meet the lending needs of its corporate customers and more effectively compete for larger commercial customers.

Old National states that the proposal would provide customers with an expanded network of over 190 branches in Indiana, Michigan, Illinois, Kentucky, and Ohio. Old National notes that the combined organization would provide United Bank's customers with an expanded and more sophisticated range of products and services than United Bank currently offers, including an enhanced range of consumer services and deposit accounts. Further, insurance products will be made available to United Bank's customers through Old National Insurance, which offers a broad array of insurance products to individuals and businesses across the United States.

#### D. Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Old National, confidential supervisory information, and the public comment on the proposal. Based on the Board's analysis of the HMDA data, its evaluation of the mortgage lending operations and compliance programs of Old National Bank and United Bank, its review of examination reports, and its consultations with other agencies, the Board concludes that the convenience and needs factor, including the CRA record of the insured depository institutions involved in this transaction, is consistent with approval of the application.

#### Financial Stability

The 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 risk to the stability of the United States banking or financial system.”<sup>39</sup>

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

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<sup>39</sup> Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, codified at 12 U.S.C. § 1842(c)(7).

system, and the extent of the cross-border activities of the resulting firm.<sup>40</sup> 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.<sup>41</sup>

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation of the proposed transaction, Old National would have approximately \$11.2 billion in consolidated assets and would be the 98th largest financial institution in the United States. The Board generally presumes that a merger resulting in a firm with less than \$25 billion in total consolidated assets would 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. The companies engage and would continue to engage in traditional commercial banking activities. The resulting organization would experience small increases in the metrics that the Board considers to measure an institution's complexity and interconnectedness, with the resulting firm generally ranking outside of the top 100 U.S. financial institutions in terms of those metrics. For example, Old National's intrafinancial assets and liabilities would constitute a negligible share of the systemwide total, both before and after the transaction. The

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<sup>40</sup> Many of the metrics considered by the Board measure an institution's activities relative to the U.S. financial system.

<sup>41</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (Feb. 14, 2012).

resulting organization would not engage in complex activities, nor would it provide critical services in such volume that disruption in those services would have a significant impact on the macroeconomic condition of the United States by disrupting trade or resulting in increased resolution difficulties.

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 has determined that considerations relating to financial stability are consistent with approval.

### Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>42</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the

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<sup>42</sup> The commenter requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application. 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 present their views. The Board has considered the commenter's request in light of all the facts of record. In the Board's view, the commenter has had ample opportunity to submit comments on the proposal and, in fact, submitted a written comment that the Board has considered in acting on the proposal. The commenter's request does not identify disputed issues of fact that are material to the Board's decision and that would be clarified by a public hearing. In addition, the request does not demonstrate why the written comment does not present the commenter's views adequately or why a hearing 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 is not required or warranted in this case. Accordingly, the request for a public hearing on the proposal is denied.



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 Old National 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 15th calendar day after the effective date of this Order or later than three months thereafter unless such period is extended for good cause by the Board or the Federal Reserve Bank of St. Louis, acting pursuant to delegated authority.

By order of the Board of Governors,<sup>43</sup> effective July 14, 2014.

*Margaret McCloskey Shanks (signed)*

Margaret McCloskey Shanks  
Deputy Secretary of the Board

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<sup>43</sup> Voting for this action: Chair Yellen, and Vice Chairman Fischer, Governors Tarullo, Powell, and Brainard.