

FEDERAL RESERVE SYSTEM

First Horizon National Corporation
First Horizon Merger Sub, LLC
Memphis, Tennessee

Order Approving the Formation of a Bank Holding Company
and the Acquisition of a Bank Holding Company

First Horizon National Corporation (“First Horizon”) and its subsidiary holding company, First Horizon Merger Sub, LLC, both of Memphis, Tennessee (collectively, “Applicants”), have requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”)¹ to acquire TrustAtlantic Financial Corporation (“TrustAtlantic”) and thereby indirectly acquire its subsidiary bank, TrustAtlantic Bank, both of Raleigh, North Carolina. Following the proposed acquisition, TrustAtlantic Bank would be merged into First Horizon’s subsidiary bank, First Tennessee Bank, N.A. (“First Tennessee Bank”), Memphis, Tennessee.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (80 Federal Register 891 (2015)).³ 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.

First Horizon, with consolidated assets of approximately \$25.7 billion, is the 61st largest insured depository organization in the United States, controlling

¹ 12 U.S.C. § 1842.

² The merger of TrustAtlantic Bank into First Tennessee 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 (“Bank Merger Act”). 12 U.S.C. § 1828(c). The OCC approved the bank merger on September 16, 2015.

³ 12 CFR 262.3(b).

approximately \$18.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.⁴ First Horizon controls First Tennessee Bank, which operates in Tennessee, Georgia, Mississippi, North Carolina, and South Carolina. First Horizon is the 59th largest insured depository organization in North Carolina, controlling approximately \$179.2 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.⁵

TrustAtlantic, with consolidated assets of approximately \$469.2 million, is the 1,444th largest insured depository organization in the United States, controlling approximately \$388.6 million in deposits, which represent less than 1 percent of nationwide deposits. TrustAtlantic controls TrustAtlantic Bank, which operates only in North Carolina. TrustAtlantic is the 41st largest insured depository organization in North Carolina, controlling \$392.4 million in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, First Horizon would remain the 61st largest depository organization in the United States, with consolidated assets of approximately \$26.2 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. First Horizon would control total deposits of approximately \$19.0 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In North Carolina, First Horizon would become the 33rd largest depository organization, controlling deposits of approximately \$571.6 million, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

⁴ Asset and nationwide deposit-ranking data are as of March 31, 2015, unless otherwise noted.

⁵ State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

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 in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.⁶ 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.⁷ In addition, the Board may not approve an interstate acquisition if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 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.⁸

For purposes of the BHC Act, First Horizon's home state is Tennessee, and TrustAtlantic's home state is North Carolina.⁹ First Horizon is well capitalized and well managed under applicable law and has a satisfactory Community Reinvestment Act

⁶ 12 U.S.C. § 1842(d)(1)(A).

⁷ 12 U.S.C. § 1842(d)(1)(B).

⁸ 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).

⁹ 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.

rating.¹⁰ North Carolina has no minimum age requirement,¹¹ and TrustAtlantic Bank has been in existence for more than five years.

On consummation of the proposed transaction, First Horizon 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 1 percent of the total amount of deposits of insured depository institutions in TrustAtlantic's home state of North Carolina, the only state in which First Horizon and TrustAtlantic have overlapping banking operations.¹² Accordingly, in light of all the facts of record, the Board may approve 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 an 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.¹³

First Horizon and TrustAtlantic have subsidiary depository institutions that compete directly in only the Raleigh, North Carolina, banking market (the "Raleigh

¹⁰ 12 U.S.C. §§ 2901–2908. There are no state community reinvestment laws applicable to this case.

¹¹ See N.C. GEN. STAT. § 53-224.19 (permitting interstate merger acquisitions but not imposing an age requirement).

¹² North Carolina does not impose a limit on the total amount of in-state deposits that a single banking organization may control.

¹³ 12 U.S.C. § 1842(c)(1).

banking market”).¹⁴ The Board has considered the competitive effects of the proposal in this 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 share of total deposits in insured depository institutions in the market (“market deposits”) that First Horizon would control;¹⁵ the concentration level of market deposits and the increase in that level, as measured by the Herfindahl-Hirschman Index (“HHI”) under the Department of Justice Bank Merger Competitive Review guidelines (“DOJ Bank Merger Guidelines”);¹⁶ and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Raleigh banking market. On consummation of the proposal, the Raleigh banking market would remain

¹⁴ The Raleigh banking market is defined as the Raleigh Rand McNally Marketing Area (“RMA”) and the non-RMA portions of Franklin, Harnett, Johnston, and Wake Counties, all in North Carolina.

¹⁵ Deposit and market share data are as of June 30, 2014, 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).

¹⁶ 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.

moderately concentrated, as measured by the HHI. The HHI change would be minimal, and numerous competitors would remain in the market.¹⁷

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 Raleigh banking 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 the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews information on the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information on 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, earnings prospects, and the impact

¹⁷ First Horizon operates the 18th largest depository institution in the Raleigh banking market, controlling approximately \$122.8 million in deposits, which represent less than 1 percent of market deposits. TrustAtlantic operates the 13th largest depository organization in the same market, controlling deposits of approximately \$344.1 million, which represent 1.4 percent of market deposits. On consummation of the proposed transaction, First Horizon would become the 12th largest depository institution in the market, controlling deposits of approximately \$466.9 million, which represent 1.9 percent of market deposits. The HHI for the Raleigh banking market would increase by one point to 1439, and 31 other competitors would remain in the market.

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 fully 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 involved in the proposal in light of their financial and managerial resources and the proposed business plan.

First Horizon and First Tennessee Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction involves the acquisition and merger of a bank holding company, and it is structured as a cash and share exchange, with a subsequent merger of the subsidiary depository institutions.¹⁸ The asset quality, earnings, and liquidity of First Tennessee Bank and TrustAtlantic Bank are consistent with approval, and First Horizon appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that First Horizon 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 First Horizon, TrustAtlantic, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by First Horizon, the Board's supervisory experiences with First Horizon and TrustAtlantic 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.

¹⁸ As part of the proposed transaction, each share of TrustAtlantic common stock would be converted into a right to receive cash and First Horizon common stock based on a fixed exchange ratio. First Horizon has the financial resources to fund the acquisition.

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

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

The Board considered a comment on the application criticizing the departure of four commercial lenders from TrustAtlantic shortly after the proposed acquisition by First Horizon was made public. The commenter expressed concern that the departure of four commercial lenders from TrustAtlantic would have a negative impact on First Horizon's future prospects. First Horizon stated that it was informed of the departures and analyzed the impact of such departures on TrustAtlantic's operations. First Horizon also noted that TrustAtlantic has taken steps to hire new commercial lenders and that First Tennessee and TrustAtlantic together have developed a plan to address the employee departures.

Based on all the facts of record, including First Horizon's 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 First Horizon and TrustAtlantic 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. In its evaluation of the effect 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 and whether the proposal would result in public benefits. In this evaluation, the Board places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act (“CRA”).¹⁹ 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,²⁰ 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.²¹

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 the supervisory 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 institution’s business model, its marketing and outreach

¹⁹ 12 U.S.C. § 1842(c)(2); 12 U.S.C. § 2901 *et seq.*

²⁰ 12 U.S.C. § 2901(b).

²¹ 12 U.S.C. § 2903.

plans, the organization's plans following consummation, and any other information the Board deems relevant.²²

Public Comments Regarding the Proposal

In this case, the Board received three comments on the proposal from two commenters criticizing the fair lending and CRA performance records of First Tennessee Bank and TrustAtlantic Bank. The OCC received and considered the same comments in connection with its review of the underlying bank merger application.

A commenter objects to the proposal on the basis of First Tennessee Bank's CRA lending record to LMI borrowers throughout its assessment areas, as reflected in the bank's most recent CRA performance evaluation by the OCC, as of January 11, 2010 ("First Tennessee Bank Evaluation"), and, in particular, in the Memphis, Tennessee-Mississippi-Arkansas Multistate Metropolitan Statistical Area ("Memphis MSA"), the Chattanooga, Tennessee-Georgia Multistate Metropolitan Statistical Area ("Chattanooga MSA"), and the Nashville Metropolitan Statistical Area ("Nashville MSA"). This commenter also expresses concerns with First Tennessee Bank's small business lending in the Chattanooga MSA. The commenter also objects to the proposal on the basis of TrustAtlantic Bank's lending record to LMI borrowers in the Wake County assessment area ("Wake County AA") and the Pitt County assessment area ("Pitt County AA"), as reflected in TrustAtlantic Bank's most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of August 22, 2013 ("TrustAtlantic Bank Evaluation"). In addition, the commenter notes that First Tennessee Bank received an overall "Low Satisfactory" rating on the Investment Test in the First Tennessee Bank Evaluation.

²² The Board has considered that First Horizon will pay \$212.5 million related to settling claims brought by the DOJ that certain mortgage loans originated by a mortgage subsidiary between 2006 and 2008 that were insured by the Federal Housing Administration did not meet the agency's certification standards. The mortgage subsidiary has been sold by First Horizon.

A commenter also objects to the proposal on the basis of First Tennessee Bank's lending record to minority borrowers in the Memphis MSA and the Raleigh, North Carolina, Metropolitan Statistical Area ("Raleigh MSA"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")²³ for 2013. Another commenter expresses concerns with First Tennessee Bank's record in lending to minority communities in the Chattanooga MSA, the Knoxville Metropolitan Statistical Area ("Knoxville MSA"), the Memphis MSA, and the Nashville MSA, as reflected in HMDA data. This commenter also expresses concern with First Tennessee Bank's lack of collection of HMDA-mandated information regarding the race of potential borrowers in the Chattanooga, Knoxville, Memphis, and Nashville MSAs.

First Tennessee Bank's Business and Response to Comments

First Tennessee Bank's business model has significantly changed since 2008. Prior to 2008, First Tennessee Bank operated as a multistate bank with national lending operations outside of its current retail banking footprint in Georgia, Mississippi, North Carolina, and Tennessee. The bank's national lending operations included financial centers in Texas and Virginia, and an expanded presence in Georgia, as well as an extensive network of mortgage production offices doing business under the name First Horizon Home Loans.

In 2008, First Tennessee Bank divested a majority of its bank branches and exited the national lending business through the sale to an unaffiliated third party of the First Horizon Home Loans business, including approximately 250 mortgage production offices and its loan origination and servicing platforms. These platforms previously had allowed First Tennessee Bank to originate government-guaranteed and conventional home purchase loans that require escrow capabilities. Concurrent with the sale of First Horizon Home Loans, First Tennessee Bank entered into an agreement with a third party, PHH Mortgage Corporation, to permit the bank to provide government-guaranteed home purchase mortgage loans with escrow capabilities in its local communities. Those loans

²³ 12 U.S.C. § 2801 et seq.

were reflected in First Tennessee Bank's HMDA report as home mortgage loans originated by First Tennessee Bank. The agreement with PHH Mortgage Corporation expired in 2012 and was not renewed. Subsequently, First Tennessee Bank entered into broker relationships with Quicken Loans, under which the bank's loan specialists assist mortgage applicants who wish to obtain a government-guaranteed loans in completing applications for government-guaranteed and conventional home purchase loans that require escrow capabilities and refer those applications to Quicken Loans for review and processing. First Tennessee Bank does not receive credit under the CRA for any loans originated by Quicken Loans pursuant to the broker relationship. First Tennessee Bank represents that, pursuant to this broker relationship, it provided 7,922 referrals to Quicken Loans from 2012 to 2014, which are not reflected in its HMDA data. First Tennessee Bank represents that it is negotiating correspondent relationships with Quicken Loans and two other third-party lenders to be able to close loans for which it would receive CRA credit. First Tennessee Bank anticipates completing those contract negotiations by the end of November.

First Tennessee Bank currently offers home mortgage loans, as well as refinance and home improvement loans; government-guaranteed loans, however, are only offered through the broker relationship with Quicken Loans. First Tennessee Bank does not accept home loan applications in person at its branch locations; rather, such applications are taken remotely at a centralized lending unit that accepts applications by phone.

First Horizon argues that First Tennessee Bank's performance in home purchase lending to LMI areas in the Memphis MSA, the Chattanooga MSA, and the Nashville MSA was impacted by changes to the bank's business operations, in particular the expiration of its contract with PHH Mortgage Corporation in 2012. Upon the termination of that contract, First Tennessee Bank was no longer able to provide government-guaranteed home purchase mortgage loans in its local communities. First Horizon emphasizes that examiners found the bank's overall home loan originations to be satisfactory in the First Tennessee Bank Evaluation, notwithstanding the change in First

Tennessee Bank's business operations and that the number of home purchase loans originated by First Tennessee Bank was low.

First Horizon asserts that the percentages of home loans in First Tennessee Bank's assessment areas, as reflected in the First Tennessee Bank Evaluation, were lower due to the significant changes to the bank's business model that occurred in 2008, as described above. In addition, First Horizon emphasizes that the bank's overall level of home loan originations was found to be satisfactory by examiners in the First Tennessee Bank Evaluation. First Horizon represents that its aggregate lending figures within its assessment areas changed significantly subsequent to the period reviewed in the First Tennessee Bank Evaluation, as the bank had significantly changed its business model at that time. Specifically, First Horizon notes that during the period from 2010 through 2014, most of First Tennessee Bank's home loans were originated within the bank's assessment areas, including 90 percent of the loans originated in its assessment areas in 2014.

In response to a commenter's observation that examiners found the bank's percentage of loans to businesses with revenues of \$1 million or less was lower than the percentage of small businesses within the Chattanooga MSA in the First Tennessee Bank Evaluation, First Horizon argues that the percentage of First Tennessee Bank's small business loans in both low-income and moderate-income geographies significantly exceeded the percentages of businesses located in those segments in the assessment area, and that First Tennessee Bank's market share of small loans to businesses in such communities significantly exceeded its overall market share. First Horizon further asserts that First Tennessee Bank has a number of products designed for small business borrowers, including secured term loans, small business credit cards, secured and unsecured lines of credit, and small business credit products through the Small Business Administration's 504, 7(a), and CAPLines programs that benefit small for-profit and not-for-profit businesses. First Horizon asserts that, to supplement its efforts to serve the needs of small business borrowers, the bank has a marketing alliance with a third-party lender that helps higher-risk small business borrowers obtain credit products. Finally,

First Horizon emphasizes that examiners' overall assessment of First Tennessee Bank's record of small business lending was "Satisfactory."

First Horizon argues that TrustAtlantic Bank's distribution of home mortgage loans among various census tracts in the Wake County AA in 2011 and 2012 reflected an overall excellent penetration rate in low- and moderate-income areas. First Horizon further asserts that TrustAtlantic Bank's distribution of home mortgage loans in moderate-income census tracts in the Pitt County AA reflected excellent penetration in 2011 and 2012. Although TrustAtlantic Bank did not originate any home mortgage loans in the low-income census tracts of the Pitt County AA in 2011 and 2012, First Horizon contends that only 0.6 percent of owner-occupied housing in the Pitt County AA is located in the low-income tracts and that aggregate lending constituted only 0.5 percent in those census tracts.

First Horizon asserts, in response to the comment on First Tennessee's performance on the Investment Test in the First Tennessee Bank Evaluation, that its private charitable foundation, established in 1993, has donated substantial amounts to meet community needs, including grants during 2014 to local organizations in the Mid-Atlantic region involved in affordable housing, healthcare, and financial literacy. First Horizon further asserts that it has enhanced its investment activities and those of First Tennessee Bank since the First Tennessee Bank Evaluation, including by providing financing to a Treasury-certified Community Development Financial Institution that provides affordable financing and related development services, investing in the Federal Home Loan Bank of Tennessee (which oversees a grant program for nonprofit agencies to develop affordable housing) and establishing the First Tennessee Housing Corporation to develop affordable multifamily housing. First Horizon also states that First Tennessee Bank made contributions during 2014 to community organizations that have a direct impact on meeting the lending needs of LMI persons in the Raleigh and Winston-Salem communities in North Carolina.

First Horizon asserts that the bank's ability to collect information on the ethnicity, race, and sex of applicants, a focus of a comment, is impacted by its current

lending strategy, in which it takes loan applications only through a process using a centralized call center. First Horizon asserts that, although the bank follows specific processes through its loan origination process to request the required information on the ethnicity, race, and sex of applicants in its loan application process, it cannot require an applicant to provide the information.

First Horizon states that its analysis of applications by census tracts indicates a close correlation between its lending activities and the ownership opportunities based on owner-occupied housing units and rental housing in such census tracts, and that the HMDA data ratios cited by the commenters do not accurately reflect First Tennessee Bank's compliance with fair lending laws. In this respect, First Horizon notes that the lack of information on the ethnicity, race, and sex of applicants resulting from its home mortgage application processes makes comparisons between racial or ethnic groups unreliable. First Horizon also notes that its business model, in which it does not currently offer government-guaranteed home purchase loans, results in significantly fewer home purchase loans as compared to competitors and in significantly fewer home purchase loans by first-time home buyers, both of which factors contribute to the disparities noted by commenters. In addition, First Horizon contends that it has a comprehensive fair lending compliance program to ensure compliance with fair lending laws.

Records of Performance Under the CRA

In evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by commenters and the response to comments by the applicant. In particular, 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, as well as information and views provided by the appropriate federal supervisors.²⁴ In this case,

²⁴ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

the Board considered the supervisory views of and information provided by the OCC, the FDIC, and the Consumer Financial Protection Bureau (“CFPB”).

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.²⁵ 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 the number and amount of home mortgage, small business, small farm, and consumer loans (as applicable), in the institution’s assessment areas; 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; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to

²⁵ 12 U.S.C. § 2906.

low-, moderate-, middle-, and upper-income individuals;²⁶ the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and 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.²⁷ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of First Tennessee Bank

First Tennessee Bank was assigned an overall "Satisfactory" rating in the First Tennessee Bank Evaluation. First Tennessee Bank received a "High Satisfactory" rating for both the Lending Test and the Service Test, and a "Low Satisfactory" rating for the Investment Test. The Board has consulted with the OCC regarding the First Tennessee Bank Evaluation.

Examiners found First Tennessee Bank's community development lending to be a good and positive factor in those assessment areas in which the bank maintained an ongoing presence. Examiners also noted that First Tennessee Bank had an adequate level of qualified investments based on the investment opportunities and dollar volume of

²⁶ 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).

²⁷ Other data relevant to a fair lending analysis could include, for example, information on credit history problems, debt-to-income ratios, and loan-to-value ratios (the reasons most frequently cited for a credit denial or higher credit cost).

investments made in the assessment areas and provided a good level of community development services in those assessment areas in which First Tennessee Bank maintained an ongoing presence.²⁸

Examiners found that the bank's overall lending activity reflected good responsiveness to the bank's deposit market share and assessment area credit needs, with a good distribution of home mortgage loans by income level or geography, as well as a good distribution of loans to borrowers of different income levels and businesses of different sizes.²⁹ Examiners found that, although the bank could improve the distribution of home purchase loans in LMI areas, its overall geographic distribution of loans in the bank's assessment areas was good when the geographic distribution of loans to small businesses, home improvement loans, and home refinance loans were included. Examiners found that First Tennessee Bank's geographic distribution of small business loans in LMI areas was excellent, but that the bank could improve its borrower distribution of such loans in the Chattanooga MSA. Examiners noted that the bank originated a majority of its loans within its designated assessment areas during the review period.

Examiners noted that, in assessment areas in which First Tennessee Bank maintained an ongoing presence, its level of community development loans was good and a positive factor that reflected responsiveness to varying needs in the assessment areas.

²⁸ The First Tennessee Bank Evaluation was conducted using the Large Institution CRA Examination Procedures. Examiners reviewed HMDA-related mortgage loan data and CRA-reportable small business lending activity reported by First Tennessee Bank from January 1, 2004, to December 31, 2009, and reviewed community development loans, investments, services, and retail services from January 1, 2005, to December 31, 2009. The OCC reviewed a majority of the bank's assessment areas using an evaluation period of approximately 12 to 24 months. This shorter evaluation period was used because First Tennessee Bank ceased its presence in many assessment areas prior to the end of 2009.

²⁹ Examiners placed greater weight on the bank's performance in three assessment areas (the Memphis MSA, the Chattanooga MSA, and the state of Tennessee), as these areas represented the bank's most significant markets in terms of deposit concentrations, lending, investments, and service activity.

For example, examiners noted that the bank's record of originating community development loans in both the Chattanooga MSA and the Memphis MSA during the evaluation period was good and had a positive impact on the bank's lending test and that the record reflected a variety of community development purposes, including affordable housing, community services targeted to LMI individuals, economic development, and revitalization and stabilization of LMI areas of the bank's assessment areas.

First Tennessee Bank's community development lending activities included providing financing to support construction of student housing at a historically black college and university, financing for a baseball stadium in a formerly blighted community, making a loan to construct a workforce training center for people with special needs, and helping several small communities recover from disasters by extending loans for infrastructure and essential equipment. In addition, First Tennessee Bank worked with local organizations to meet unique lending needs, for example, by partnering with the Business Expansion Funding Corporation, a community development corporation in North Carolina, to extend a loan under the Small Business Administration's Section 504 loan program to a small business in Wake County, North Carolina, that was anticipated to create many new jobs in the local community.

Examiners found that First Tennessee Bank had an adequate level of qualified community development investments based on the investment opportunities and dollar volume of investments made in First Tennessee Bank's assessment areas. During the evaluation period, First Tennessee Bank's total investments consisted primarily of Low Income Housing Tax Credit investments, and examiners found that these investments were very responsive to affordable housing needs and required considerable management time and expertise to monitor the bank's investment portfolio. Examiners noted that First Tennessee Bank had an adequate volume of community development investments in the Memphis MSA that addressed the need for affordable housing and community services for LMI individuals.

Examiners observed that First Tennessee Bank's branch locations were accessible in the assessment areas in which the bank maintained an ongoing presence.

Examiners noted that the bank provided a good level of community development services in the Memphis MSA and Chattanooga MSA, with a good distribution of bank branches in both low- and moderate-income geographies. Examiners also noted that First Tennessee Bank had a good level of community development services in the Memphis MSA and a high level of community development services in the Chattanooga MSA.

First Tennessee Bank's Efforts Since the First Tennessee Bank Evaluation

First Horizon asserts that, since the First Tennessee Bank Evaluation, First Tennessee Bank has been an active partner in numerous community development initiatives to meet the needs of its local communities in the areas of lending, investments, and services. First Tennessee Bank has made community development loans that support affordable housing, economic development, stabilization and revitalization, and community services. Such lending activities included making community development loans for the purpose of providing childcare, education, and access to health and other social services for LMI individuals and minority individuals in the communities it serves, as well as financing small businesses to promote growth and economic development in a number of the LMI communities it serves. First Horizon asserts that it established a target of originating up to 30 percent of its mortgage loans to LMI borrowers or in LMI geographies, with a heightened focus on the Chattanooga, Memphis, Raleigh, and Wake County assessment areas. In furtherance of this goal, First Horizon notes that it has been engaged in discussions with third-party mortgage lenders to establish relationships that would permit First Tennessee Bank to originate government-guaranteed mortgage loans and conventional home mortgage purchase loans that require escrow capabilities. First Tennessee Bank also has partnered with Operation Hope to provide credit counseling, budgeting, and other financial empowerment training to individuals who earn less than \$50,000 per year and has committed to establishing at least ten locations in which such services will be provided over the next two years. First Horizon further contends that it periodically reviews its branch strategy to ensure that First Tennessee Bank's branch delivery system serves its customers throughout its local communities, including LMI areas. As described above, First Tennessee Bank also has continued developing its small

business product offerings under the Small Business Administration's 504, 7(a), and CAPLines programs, and the bank has stated that it will recruit a targeted Small Business Administration business development officer by the end of 2015 to market its Small Business Administration programs. The Bank also has committed to originating 30 percent of its loans to small businesses in LMI geographies throughout all of its current assessment areas.

First Horizon asserts that First Tennessee Bank has made community development investments for the purpose of providing safe and affordable housing, childcare, education, and access to health and other social services for LMI individuals and minority individuals in the communities it serves. First Horizon also maintains that First Tennessee Bank contributed to projects to revitalize and stabilize distressed communities across its assessment areas. First Horizon notes that its total qualified investments declined in 2013 and 2014 due to the reduction in the availability of Low Income Housing Tax Credit investments in those years as a result of the condition of the housing market. In addition, First Horizon represents that First Tennessee Bank has committed to invest at least one percent of its Tier 1 capital on an annual basis to community development activities.

First Horizon represents that First Tennessee Bank's community development service activities have included acting as the financial sponsor for a number of activities to promote financial literacy. In addition, First Horizon asserts that First Tennessee Bank employees have provided thousands of hours of volunteer services to support consumers and civic organizations.

CRA Performance of TrustAtlantic Bank

The TrustAtlantic Bank Evaluation was conducted by the FDIC using the Intermediate Small Bank CRA Examination Procedures.³⁰ TrustAtlantic Bank was

³⁰ The lending test applicable to intermediate small banks specifically evaluates the institution's loan-to-deposit ratio and other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or

assigned a “Satisfactory” rating in the TrustAtlantic Bank Evaluation, with ratings of “Satisfactory” for the Lending Test and “Outstanding” for the Community Development Test.³¹ Examiners noted that TrustAtlantic Bank provided for the credit needs and economic development of the assessment areas in a manner consistent with its size, financial capacity, location, and local economic conditions.³² The Board has consulted with the FDIC, the primary supervisor of TrustAtlantic Bank, regarding the TrustAtlantic Bank Evaluation.

Examiners noted that the bank originated a majority of its loans within its assessment area, demonstrating reasonable performance. Examiners found that the bank’s geographic distribution of home mortgage loans reflected an excellent penetration rate in LMI areas in both the Wake County AA and Pitt County AA and that small business loans reflected a marginally reasonable dispersion throughout the Wake County AA and an excellent dispersion throughout the Pitt County AA. Examiners also found that the bank’s distribution of loans to borrowers reflected an overall reasonable distribution among individuals of different income levels and businesses of different sizes. Nevertheless, examiners concluded that the bank had room to improve its performance in home mortgage lending to LMI borrowers in the Wake County AA and Pitt County AA.

qualified investments; the percentage of loans and other lending-related activities located in the bank’s assessment areas; the bank’s record of lending to and engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank’s loans; and the bank’s record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas. See, e.g., 12 CFR 228.26(b).

³¹ Examiners reviewed the bank’s commercial and residential lending activity from June 30, 2012, to June 30, 2013. These products were selected for analysis because they represented 52 percent and 29 percent, respectively, of the bank’s loan portfolio.

³² The TrustAtlantic Bank Evaluation reviewed the bank’s two assessment areas, including include Wake County, which is part of the three-county Raleigh-Cary Metropolitan Statistical Area, and Pitt County, which encompasses the entire Greenville Metropolitan Statistical Area, both in North Carolina.

Examiners noted that TrustAtlantic Bank's community development performance demonstrated excellent responsiveness to the community's development needs in its assessment areas. Examiners also found that TrustAtlantic Bank provided an adequate level of community development services through its employee involvement in community development organizations.

Views of Other Regulators and OCC Approval of the Bank Merger

The Board has consulted with the OCC, the primary supervisor of First Tennessee Bank, in connection with the OCC's review of the proposed merger of First Tennessee Bank and TrustAtlantic Bank, which is a substantive part of the proposal before the Board. The OCC received comments substantially identical to the comments submitted to the Board and conducted a review of these comments as they pertain to the two banks, taking into consideration the HMDA data cited by the commenters; First Tennessee Bank's CRA, consumer compliance, and fair lending records; the bank's marketing outreach to African Americans and Hispanics and in LMI communities; and other community outreach efforts. The OCC found that although First Tennessee Bank's performance under the CRA was satisfactory, the First Tennessee Bank Evaluation and public comment on the proposal identified areas for improvement for the bank in North Carolina, specifically with respect to First Tennessee Bank's provision of products and services to LMI individuals and in LMI geographies, to minority individuals within its assessment areas, and in First Tennessee Bank's Investment Test performance.

After a full review of the proposal, including consideration of the public comments, the OCC determined that the proposal met the standards of the Bank Merger Act and approved the proposal applying the same standards as must be reviewed by the Board under the BHC Act. As a condition to approving the Bank Merger Act application, the OCC required First Tennessee Bank to develop a CRA Plan within 90 days of the OCC's action on the bank merger that contains measureable annual goals and timetables to achieve the discrete goals discussed in the CRA Plan. This plan is designed to ensure that First Tennessee Bank addresses weaknesses in its performance

and implements a program suitable to the increased size and complexity that results from consummation of this proposal.

Public Benefits of the Proposal

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. One commenter expressed concern that First Horizon has not demonstrated how the proposal would result in clear public benefits.

First Horizon represented that the proposal would improve convenience for customers by providing them with a broader range of financial products and services through an expanded branch network. First Horizon represented that customers of TrustAtlantic Bank would have access to additional deposit products, including wholesale and retail lockbox and a more advanced remote deposit capture product; disbursement products with fraud protection; purchase and payroll cards; electronic bill pay; more sophisticated wire transfer and ACH systems; mobile banking; credit cards and debit cards that can be reissued within branch offices; financial planning for individuals and families; investment management; a full service trust department; and a larger legal lending limit. According to First Horizon, TrustAtlantic Bank's customers also would benefit from First Tennessee Bank's broader expertise in specialized segments including larger commercial segments not currently served by TrustAtlantic Bank and industry segments such as healthcare, transportation, consumer finance, and asset-based lending; government and municipal finance; interest rate protection products; and ancillary services that include a full-service international department.

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 OCC, the FDIC, and the CFPB; confidential supervisory information; information provided by First Horizon; and the public comments on the proposal. Based on that

review, the Board concludes that the proposal would result in public benefits and that the convenience and needs factor is consistent with approval.

The Board expects First Horizon to continue making progress to address weaknesses in the CRA performance of its banks and to implement a program for lending, investments, and services that is commensurate with the size, complexity, and expanding geography of the combined organization. This includes executing CRA plans that address any weaknesses in the performance of the banks before First Horizon seeks to engage in further expansionary activity. The Board will monitor progress by First Horizon as part of the supervisory process.

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 risk to the stability of the United States banking or financial system.”³³

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.³⁴ These categories are not exhaustive, and additional categories could

³³ Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 123 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

³⁴ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system.

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.³⁵

The Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, First Horizon would have approximately \$26.1 billion in consolidated assets and, by any of a number of alternative measures of firm size, First Horizon would not be likely to pose systemic risks. The Board generally presumes that a merger that involves an acquisition of less than \$2 billion in 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.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.³⁶ In reaching its

³⁵ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012).

³⁶ The commenters requested that the Board hold public hearings on the proposal. Section 3(b) of the BHC Act does not require that the Board 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

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. The Board's approval is specifically conditioned on compliance by Applicants 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,³⁷ effective September 17, 2015.

Margaret McCloskey Shanks (signed)

Margaret McCloskey Shanks
Deputy Secretary of the Board

when written comments would not adequately represent their views. The Board has considered the request in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to submit comments on the proposal and, in fact, submitted written comments that the Board has considered in acting on the proposal. The commenters' requests do 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 requests do not demonstrate why the written comments do not present the commenters' views adequately or why a hearing would otherwise 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 requests for a public hearing on the proposal are denied.

³⁷ Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell and Brainard.