FRB Order No. 2017-21
August 30, 2017

FEDERAL RESERVE SYSTEM

Sterling Bancorp
Montebello, New York

Order Approving the Acquisition of a Savings and Loan Holding Company and Acquisition of a Saving Association

Sterling Bancorp ("Sterling"), Montebello, New York, a financial holding company within the meaning of the Bank Holding Company Act of 1956, as amended ("BHC Act"), has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[1] to acquire Astoria Financial Corporation ("Astoria"), Lake Success, New York, a savings and loan holding company, and thereby indirectly acquire its subsidiary, Astoria Bank, Long Island City, New York, a federal savings association. Following the proposed acquisition, Astoria would be merged into Sterling, and Astoria Bank would be merged into Sterling's subsidiary bank, Sterling National Bank ("Sterling Bank"), Montebello, New York.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (82 Federal Register 19048 (2017)).[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 the BHC Act.

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[1] 12 U.S.C. §§ 1843(c)(8) and (j).

[2] The merger of Astoria Bank into Sterling Bank, which is expected to occur immediately after Sterling's acquisition of Astoria, 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). The OCC approved the bank merger on August 16, 2017.

[3] 12 CFR 262.3(b).

Sterling, with consolidated assets of approximately $15.4 billion, is the 100th largest insured depository organization in the United States, controlling approximately $10.1 billion in deposits.[4] Sterling controls Sterling Bank, which operates in New York and New Jersey. Sterling Bank is the 19th largest depository institution in New York, controlling deposits of approximately $9.5 billion, which represent less than 1 percent of the total deposits of insured depository institutions in New York. Sterling Bank is the 67th largest depository institution in New Jersey, controlling deposits of approximately $347.0 million, which represent less than 1 percent of the total deposits of insured depository institutions in New Jersey.[5]

Astoria, with consolidated assets of approximately $14.1 billion, is the 97th largest insured depository organization in the United States, controlling approximately $9.1 billion in deposits. Astoria controls Astoria Bank, which operates solely in New York. Astoria Bank is the 20th largest insured depository institution in New York, controlling deposits of approximately $9.1 billion, which represent less than 1 percent of the total deposits of insured depository institutions in that state.

On consummation of this proposal, Sterling would become the 62nd largest insured depository organization in the United States, with consolidated assets of approximately $29.0 billion, which represent less than 1 percent of the total assets of insured depository institutions in the United States. Sterling would control total deposits of approximately $19.1 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In New York, Sterling would become the 14th largest depository organization, controlling deposits of approximately $18.6 billion, which represent less than 1.5 percent of the total deposits of insured depository institutions in New York.

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[4] Consolidated asset data are as of June 30, 2017. Nationwide asset ranking and deposit data are as of December 31, 2016, unless otherwise noted.

[5] State deposit data are as of June 30, 2016, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

The Board previously has determined by regulation that the operation of a savings association by a bank holding company is closely related to banking for purposes of section 4(c)(8) of the BHC Act.[6] The Board requires that savings associations acquired by bank holding companies conform their direct and indirect activities to those permissible for bank holding companies under section 4(c)(8) of the BHC Act.[7] Sterling has committed that all of the activities of Astoria and its subsidiaries would conform to those permissible under section 4 of the BHC Act and Regulation Y or be divested.

Factors Governing Board Review of the Transactions

Because this transaction involves the acquisition of a savings association, the Board has reviewed the transaction under section 4 of the BHC Act. Section 4(j)(2)(A) of the BHC Act requires the Board to consider whether the proposed acquisition of Astoria "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[8] As part of its evaluation, the Board reviews the financial and managerial resources and the future prospects of the companies involved, the effect of the proposal on competition in the relevant markets, the risk to the stability of the United States banking or financial system, and the public benefits of the

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[6] 12 CFR 225.28(b)(4)(ii).

[7] 12 CFR 225.28(b)(4).

[8] 12 U.S.C. § 1843(j)(2)(A). Section 604(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1601 (2010), added "risk to the stability of the United States banking or financial system" to the list of possible adverse effects.

proposal.[9] The Board also reviews the records of performance of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[10]

Competitive Considerations

As part of the Board's consideration of the factors under section 4 of the BHC Act, the Board evaluates the competitive effects of a proposal in light of all of the facts of record.[11]

Sterling and Astoria have subsidiary depository institutions that compete directly in the Metro New York City, New York-New Jersey-Connecticut-Pennsylvania ("Metro New York City") banking market.[12] The Board has considered the competitive effects of the proposal in this 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 share of total deposits in insured depository institutions in the market ("market deposits") that Sterling would control;[13] the concentration levels of

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[9] See 12 CFR 225.26; see, e.g., Capital One Financial Corporation, FRB Order 2012-2 (February 14, 2012) ("Capital One Order"); Bank of America Corporation/Countrywide, 94 Federal Reserve Bulletin C81 (2008); Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006).

[10] The proposal does not raise interstate issues under section 4(c)(8) of the BHC Act because New York is the home state of both Sterling and Astoria Bank. See 12 U.S.C. § 1843(i)(8).

[11] 12 U.S.C. § 1843(j)(2).

[12] The Metro New York City market includes Fairfield County and portions of Litchfield and New Haven counties of Connecticut; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester counties and portions of Columbia and Greene counties of New York; Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union counties and portions of Burlington, Mercer, and Warren counties of New Jersey; and Pike County and portions of Monroe and Wayne counties of Pennsylvania.

[13] Local deposit and market share data are as of June 30, 2016, 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

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");[14] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines for the Metro New York City banking market. On consummation of the proposal, the Metro New York City market would remain moderately concentrated, as measured by the HHI. The change in the HHI would be minimal, and numerous competitors would remain in the market following consummation of the proposal.[15]

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).

[14] 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.

[15] Sterling operates the 23rd largest depository institution in the Metro New York City market, controlling approximately $9.8 billion in deposits, which represent 0.6 percent of market deposits. For purposes of the HHI analysis, Astoria operates the 32nd largest depository institution in the same market and is treated as controlling approximately $4.6 billion in deposits (i.e. actual deposits weighted at 50 percent), which represent 0.3 percent of market deposits. On consummation of the proposed transaction, Sterling would become the 16th largest depository institution in the Metro New York City market, controlling deposits of approximately $19.0 billion, which represent 1.1 percent of market deposits. The HHI for the Metro New York City market would decrease by 6 points to 1316, and 237 competitors would remain in the market. For purposes of competitive analysis, once a savings association is acquired by a bank holding company,

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 Metro New York City 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 proposals under section 4 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[16] In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as information about 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 public and supervisory information regarding capital adequacy, asset quality, and earnings performance, as well as public comments on the proposal. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and to complete effectively the proposed integration of the operations of the institutions. In assessing financial factors, the Board considers capital adequacy to be especially important. The Board considers the future prospects of the organizations

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the Board weights the deposits controlled by the savings association at 100 percent, similar to a commercial bank.

[16] 12 U.S.C. § 1843(j)(4); 12 CFR 225.26(b).

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

Sterling and Sterling Bank are both well capitalized and would remain so on consummation of the proposal. The proposed transaction is a holding company merger that is structured as a share exchange, with a subsequent merger of the subsidiary depository institutions.[17] The asset quality, earnings, and liquidity of Sterling Bank and Astoria Bank are consistent with approval, and Sterling appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institution's operations. In addition, the future prospects of the institution under the proposal are considered consistent with approval.

The Board also has considered the managerial resources of the organizations involved and of the proposed combined organization. The Board has reviewed the examination records of Sterling, Astoria, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Sterling, the Board's supervisory experiences with Sterling and Astoria and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws, as well as information provided by the commenters.

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

The Board also has considered Sterling's plans for implementing the proposal. Sterling is devoting significant financial and other resources to address all

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[17] As part of the proposed transaction, each share of Astoria common stock would be converted into a right to receive Sterling common stock based on a fixed exchange ratio.

aspects of the post-acquisition integration process for this proposal. Sterling would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective. In addition, Sterling's management has the experience and resources to ensure that the combined organization operates in a safe and sound manner, and Sterling plans to integrate Astoria's existing management and personnel in a manner that augments Sterling's management.[18]

Based on all of the facts of record, including Sterling's supervisory record, managerial and operational resources, and plans for operating the combined organization after consummation, the Board concludes that considerations relating to the financial and managerial resources and the future prospects of the organizations involved in the proposal, as well as the records of effectiveness of Sterling and Astoria in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 4 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served in weighing the possible adverse effects against the public benefits of the transaction.[19] In its evaluation of the effects of the proposal on the convenience and needs of the communities to be served, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve 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 CRA.[20] The CRA requires the federal financial supervisory agencies to encourage

[18] On consummation, four individuals currently serving as directors and officers of Astoria and Astoria Bank will be added to the board of directors of Sterling and Sterling Bank.

[19] 12 U.S.C. § 1843(j)(2).

[20] 12 U.S.C. § 2901 et seq.

insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,[21] 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.[22]

In addition, the Board considers the banks' overall compliance records and the results of 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 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, marketing and outreach plans, the organization's plans following consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all of the facts of record, including reports of examination of the CRA performance of Sterling Bank and Astoria Bank, the fair lending and compliance records of both banks, the supervisory views of the OCC, confidential supervisory information, information provided by Sterling, and the public comments on the proposal.

Public Comments Regarding the Proposal

In this case, the Board received comments from three commenters. One commenter objected to the proposal on the basis of alleged disparities in the number of conventional home purchase loans made by Sterling Bank to minorities in the New York-Jersey City-White Plains, NY-NJ Metropolitan Division ("New York City MD") and in the number of conventional home purchase and home improvement loans made by Sterling Bank to minorities in the Nassau County-Suffolk County, NY Metropolitan

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21 12 U.S.C. § 2901(b).

22 12 U.S.C. § 2903.

Division ("Nassau-Suffolk MD"), as reflected in data reported under the Home Mortgage Disclosure Act ("HMDA")[23] for 2015 and 2013, respectively. This same commenter alleged that Sterling Bank has not complied with a CRA Plan that the OCC required it to develop in connection with a 2015 merger with Hudson Valley Bank, N.A. ("Sterling CRA Plan"). Other commenters praised many aspects of Sterling's and Astoria's CRA activities, but criticized other aspects of the CRA and fair lending records of Sterling Bank and/or Astoria Bank and requested that an updated CRA Plan, reflecting formal input from community organizations, be required as a condition of approval. These commenters asserted that the updated CRA plan should include specific goals in the areas of lending, investment, and services for each of the markets served by the combined organization, particularly with respect to LMI neighborhoods and LMI census tracts. One commenter further requested that Sterling Bank commit to sharing yearly outcomes under the CRA Plan that include the number and dollar amount of those goals by each lending category, both in its entire footprint and in Long Island.[24]

One commenter expressed concern about Sterling Bank's recent record of branch closures in New York City and also recommended certain best practices that Sterling should adopt with respect to multifamily housing lending. Another commenter stated that the merger should be conditioned on Sterling Bank retaining all of Astoria Bank's branches in Long Island.

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[23] 12 U.S.C. § 2801 et seq.

[24] The Board has consistently found that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organizations. See, e.g., United Bancshares, Inc., FRB Order No. 2017-10 at 12 fn. 28 (April 6, 2017); Huntington Bancshares Inc., FRB Order No. 2016-13 at 32 fn. 50 (July 29, 2016); CIT Group, Inc., FRB Order No. 2015-20 at 24 fn. 54 (July 19, 2015); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002). In its evaluation, the Board reviews the existing CRA performance record of an applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas.

The OCC considered the same adverse comments in connection with its review of the underlying bank merger application.[25]

Businesses of the Involved Institutions and Response to Comments

Sterling Bank is a regional banking franchise headquartered in Montebello, New York. It is a full-service bank that offers a wide range of financial services, with a primary focus on loans and deposit services to small and middle market commercial businesses. Sterling Bank's lending portfolio primarily consists of small business loans, commercial real estate loans, commercial and industrial loans, and one-to-four family residential real estate loans, with a limited residential mortgage loan and consumer loan operation.[26] In addition to traditional deposit and loan products, Sterling Bank offers investment products and wealth management services.

Astoria Bank, a federal savings association with 87 branches in New York, offers a full range of loans and deposit services to its customers. Astoria Bank traditionally has focused on residential real estate lending. Astoria Bank also has 10 operating subsidiaries, including a mortgage company, a broker-dealer, and single-purpose entities that manage bank-owned assets. In addition to Astoria Bank, Astoria

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[25] A commenter stated that Sterling Bank's CRA data had been deemed unreliable, in addition to citing HMDA data disparities in Sterling Bank's conventional home purchase and home improvement lending to whites compared to African Americans and/or Hispanics. The OCC conducted reviews of the accuracy of Sterling Bank's HMDA and CRA data and assessed fair lending risk at Sterling Bank. In that regard, the OCC evaluated supervisory information as well as other information provided by Sterling Bank. Examiners noted in the Sterling Bank CRA evaluation as of January 18, 2017 ("Sterling Bank Evaluation"), that they found errors in the data related to small business lending, which subsequently were corrected by Sterling Bank. Examiners relied on the corrected data in conducting Sterling Bank's CRA performance evaluation.

[26] In 2016, Sterling Bank sold its residential mortgage division to Freedom Mortgage, and the bank generally refers individuals interested in home mortgages to Freedom Mortgage. One commenter indicated that Long Island community groups have concerns regarding Freedom Mortgage. Sterling represents that Sterling Bank has no role in the mortgage application process after a referral is made to Freedom Mortgage. Sterling Bank also represents that it continues to make residential mortgages to LMI individuals through its Community Banking team.

operates AF Insurance Agency, Inc., which provides life insurance products primarily to Astoria Bank customers.

In response to comments, Sterling highlights the updated CRA Plan that the bank provided in connection with the proposed transaction. Sterling asserts that it consulted with a number of community groups in developing the updated CRA Plan and that the bank is aware of many of the concerns mentioned by the commenters.

In addition, Sterling asserts that its fair lending program extends to every phase of a credit transaction, including advertising, pre-application inquiries, loan disbursement, and ongoing servicing. Sterling asserts that all mortgage applications received by Sterling Bank are reviewed in accordance with the bank's policies and procedures for underwriting and are subject to all of the bank's policies and procedures with respect to fair lending. Sterling further represents that Sterling Bank's lending practices are based on criteria that ensure both safe and sound lending and equal access to credit and that the bank has comprehensive procedures and policies in place to accomplish these goals, which include an established Fair Lending Program that is approved annually by the Management Enterprise Risk Management Committee. Sterling represents that the bank's Fair Lending Program includes a "second review" process for any loan denial, ongoing fair lending training for the bank's lending personnel, an annual fair lending risk assessment conducted by a Compliance Risk Management Department, and ongoing monitoring and testing to assess fair lending compliance. Sterling represents that Sterling Bank's existing consumer compliance program, including fair lending, would apply to the combined organization

In response to commenters' concerns about its performance under its current CRA Plan, Sterling represents that Sterling Bank has achieved or exceeded its enhanced CRA goals for the first operational year under the CRA Plan. Sterling highlighted the bank's increased activities in mortgage lending through its Community Banking team, in small business lending, and in community development lending. Sterling argues that it is challenging to glean conclusions regarding the bank's record of lending to minorities in the New York-Newark-Jersey City, NY-NJ-PA, Multistate Metropolitan Statistical Area

("New York City MMSA") based on lending data because of the low number of overall applications and originations in the New York City MMSA and the limited nature of Sterling Bank's mortgage lending program. However, Sterling represents that Sterling Bank is very active in a number of outreach and marketing programs across the bank's footprint that focus on LMI census tracts and minority communities.

Sterling asserts that Sterling Bank is committed to continuing the existing partnerships of both it and Astoria Bank with organizations that support a variety of efforts to benefit local communities. Specifically, Sterling intends to maintain Astoria Bank's membership in the New York Mortgage Coalition and expand, to the extent possible, on its partnership with the State of New York Mortgage Agency.

Records of Performance Under the CRA

As indicated above, in evaluating the convenience and needs factor and CRA performance, the Board considers substantial information in addition to information provided by public commenters. In particular, the Board evaluates an institution's performance in light of examinations and other supervisory information, as well as information and views provided by the appropriate federal supervisors.[27] In this case, the Board consulted with and considered supervisory information provided by the OCC.

The CRA requires that the appropriate federal financial supervisor for a depository institution prepare a written evaluation of the institution's record of helping to meet the credit needs of its entire community, including LMI neighborhoods.[28] 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.

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

[28] 12 U.S.C. § 2906.

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 amounts 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 amounts of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amounts of home mortgage loans to low-, moderate-, middle-, and upper-income individuals;[29] the institution's community development lending, including the number and amounts 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 commenters assert that HMDA data reflect disparities in the rates of loan applications, originations, or 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

[29] Examiners also consider the number and amounts 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).

obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[30] Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

CRA Performance of Sterling Bank

Sterling Bank was assigned an overall "Satisfactory" rating by the OCC at its most recent CRA performance evaluation, as of January 18, 2017 ("Sterling Bank Evaluation").[31] Sterling Bank received "High Satisfactory" ratings for the Lending Test, Investment Test, and Service Test.[32] Moreover, examiners found that in 2016, the first of three years under the Sterling CRA Plan, Sterling Bank met or exceeded goals established

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[30] Other data relevant to credit decisions could include credit history, debt-to-income ratios, and loan-to-value ratios. Accordingly, when conducting fair lending examinations, examiners analyze such additional information before reaching a determination regarding an institution's compliance with fair lending laws.

[31] The Sterling Bank Evaluation was conducted using the Large Bank Examination Procedures that include the Lending, Investment and Service tests. For the lending test, examiners reviewed loans reportable under HMDA and CRA data collection requirements from January 1, 2014, through December 31, 2016. The evaluation period for community development loans, investments, and services was from January 21, 2014, through January 21, 2017. As of the evaluation date, 38 of the bank's 40 branches were located within the New York City MMSA. Consequently, the greatest weight was given to the New York City MMSA in the determination of the bank's overall CRA rating. Within the New York City MMSA, there is one branch office in New Jersey, in Bergen County, and the remaining MMSA branches are in Bronx County, Kings County, New York County, Orange County, Queens County, Rockland County and Westchester County, all in New York State.

[32] Examiners conducted full-scope reviews of the New York City MMSA and the non-MSA Sullivan County NY assessment areas of the bank, based, in part, on the level of deposits and lending activity within each assessment area. Examiners performed a limited-scope review of the bank's performance in the Kingston NY MSA. Although examiners assessed Sterling Bank's activities in the State of New York rating area, which consisted of the bank's performance in non-MSA Sullivan County and the Kingston NY MSA, and rated the bank "Needs to Improve" for that rating area, the bank's minimal presence (two branches) and activity in the State of New York rating area limited the influence of this area on the bank's overall CRA rating.

by the CRA Plan for home mortgage and small business lending, as well as for qualified investments and community development services for the New York City MMSA.

Overall, examiners found that Sterling Bank originated and purchased a substantial majority of loans within the bank's assessment areas and that the distribution of the bank's loans was good when measured by geography and adequate when measured by the income level of borrowers. In the New York City MMSA, examiners found the bank's level of lending to be good, and examiners did not identify any unexplained, conspicuous gaps in lending. The distribution of the bank's loans across borrowers of different income levels and businesses of different sizes was found to be adequate in the New York City MMSA. In addition, examiners found that, although the bank's distribution of lending to small businesses reflected poor penetration, the bank exhibited a good level of small business lending activity in the New York City MMSA.

Also in the New York City MMSA, examiners found the bank's geographic distribution of home mortgage loans to be good, while its distribution of home mortgage loans across borrowers of different income levels reflected adequate penetration. Moreover, examiners concluded that home purchase, home refinance, and home improvement lending reflected adequate distribution to LMI borrowers. In evaluating Sterling Bank's home purchase lending to LMI borrowers, examiners noted that the median housing value in the New York City MMSA significantly limited home purchase opportunities for LMI borrowers. In addition, examiners highlighted that the bank's home purchase loans to LMI borrowers were significantly higher in 2016 than in 2014. Examiners considered this trend regarding Sterling Bank's home purchase loans, as well as the bank's responsiveness by increasing its home mortgage lending to LMI borrowers after meeting with local community organizations, as factors in concluding that Sterling Bank's borrower distribution of home mortgage loans was adequate. In addition, examiners noted that Sterling Bank introduced a loan program targeted to specific LMI co-op developments in Bronx County, New York.

Overall, examiners noted that Sterling Bank had a relatively high level of community development loans that exhibited good responsiveness to community needs.

In the New York City MMSA, examiners found that the bank made a good level of community development loans. Examiners reported that, during the evaluation period, Sterling Bank originated or participated in community development loans in the New York City MMSA that generally provided loans for affordable housing and for healthcare services to LMI individuals, and that revitalized or stabilized LMI areas or designated disaster areas.

Examiners found that overall Sterling Bank made a significant level of qualified investments. In the New York City MMSA, examiners found that Sterling Bank made a relatively high level of qualified investments that demonstrated good responsiveness to community needs. Examiners noted that the majority of the bank's investments in the New York City MMSA were mortgaged-backed securities where the underlying home mortgages were primarily to LMI borrowers, and that the remaining qualified investments represented an excellent level of responsiveness to the housing needs of the New York City MMSA. Examiners highlighted the bank's qualified investments in municipal bonds that supported affordable housing developments and the construction and rehabilitation of LMI multifamily rental developments.

Sterling Bank's retail branching services were found to be reasonably accessible in its assessment areas. Examiners found that overall Sterling Bank provided a relatively high level of community development services. In the New York City MMSA, examiners found that the bank's delivery systems were reasonably accessible to census tracts and individuals of different income levels. Examiners also found that Sterling Bank's services did not vary in a way that inconvenienced LMI geographies in the New York City MMSA. Examiners noted that the bank's performance in providing community development services was good. In addition, examiners found that Sterling Bank's opening and closing of branches in the New York City MMSA did not adversely affect the bank's delivery systems, particularly for LMI geographies.

Sterling Bank's Activities Since the Sterling Bank Evaluation

Sterling represents that Sterling Bank continues to build upon its strong CRA foundation in 2017, based on a review of Sterling Bank's second quarter CRA Plan performance. Sterling asserts that, among other activities, Sterling Bank has invested in a Low Income Housing Tax Credit participation fund, originated an affordable mortgage, and provided a financial literacy seminar through its branch located in Sullivan County.

CRA Performance of Astoria Bank

Astoria Bank was assigned an overall CRA rating of "Satisfactory" at its most recent CRA performance evaluation by the OCC, as of December 3, 2012 ("Astoria Bank Evaluation").[33] The bank received a "High Satisfactory" rating for the Lending Test and "Low Satisfactory" ratings for the Investment Test and Service Test.[34]

In evaluating the Lending Test, examiners found that the majority of Astoria Bank's lending occurred in its assessment areas. Examiners found that the bank's overall lending performance was good given the level of competition for reportable home mortgage loans and small loans to businesses in its assessment areas. In addition, examiners noted that the bank was able to achieve an overall good level of lending

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[33] The Astoria Bank Evaluation was conducted using the Large Bank Evaluation Procedures for the Lending, Investment, and Service tests. Examiners reviewed home mortgage loans reported pursuant to HMDA and small business loans reported under CRA data collection requirements from July 1, 2009, to December 31, 2011. The Lending Test evaluated the bank's loan originations and purchases of loans reportable under HMDA and small business loans from July 1, 2009, through December 31, 2011. The evaluation period for community development loans, qualified investments, and services was from July 1, 2009, to November 30, 2012. Examiners placed more weight on the bank's home mortgage lending, including purchases and refinancing, than on small loans to businesses and multifamily home mortgage loans. Examiners noted that home improvement and farm loans were not considered as none were originated during the relevant time period.

[34] The Astoria Bank Evaluation included a full-scope review of Astoria Bank's two assessment areas, both located within the State of New York: the New York MD assessment area and the Nassau-Suffolk MD assessment area. The New York MD assessment area was comprised of six counties in the New York-White Plains-Wayne, NY-NJ, MD. The Nassau-Suffolk MD assessment area was comprised of Nassau and Suffolk counties and is one of the four MDs that make up the New York-Northern New Jersey-Long Island, NY-NJ-PA, MSA.

activity within its assessment areas even though an economic recession occurred during the evaluation period.

Overall, examiners found that Astoria Bank showed good responsiveness to the credit needs in its assessment areas and identified no conspicuous gaps in either the bank's home mortgage or small business lending. Examiners found that the bank's overall geographic distribution of home mortgage loans was poor, although the examiners noted that there were very limited opportunities to make home mortgage loans in low-income geographies in the Nassau-Suffolk MD assessment area and somewhat limited opportunities in the New York MD assessment area, given the low percentage of owner-occupied housing units in those geographies. In the New York MD assessment area, examiners found the bank's portion of multifamily lending in low-income geographies to be very poor, but found the multifamily lending in moderate-income geographies to be excellent. Examiners also found the bank's mortgage loan-to-deposit ratio to be good.

In addition, examiners found that the bank's overall distribution of lending to borrowers of different income levels was adequate. Examiners considered factors such as the cost of housing in the bank's assessment areas and the demographics of the population base in evaluating the bank's ability to make mortgage loans. Examiners also found the bank's overall geographic distribution of lending activity, including both home mortgage and small business lending, reflected adequate penetration throughout the assessment areas.

In evaluating the Investment Test, examiners found the grants provided by Astoria Bank in the Nassau-Suffolk MD assessment area to be responsive to community needs. Examiners also found the bank's grants and investments in the New York MD assessment area to be responsive to community needs.

In evaluating the Service Test, examiners found Astoria Banks's delivery systems to be reasonably accessible to essentially all portions of its assessment areas. Examiners noted that the bank's opening and closing of branches in the Nassau-Suffolk MD had not adversely affected the accessibility of its branches, including to LMI geographies and individuals, and that there were no material differences in the products and services offered in the bank's branches. Examiners further noted that, overall, the bank provided a good level of community development services in the areas in which the bank maintained an ongoing presence, including by promoting the development of affordable housing, promoting economic development within LMI geographies, or providing services that benefitted LMI individuals. Examiners found that Astoria Bank's personnel frequently took leadership positions in many of the organizations that provide community development services.

Astoria Bank's Activities Since the Astoria Bank Evaluation

Sterling represents that since the Astoria Bank Evaluation, Astoria Bank has maintained a strong CRA performance across its assessment areas. Specifically, Sterling represents that since its last evaluation, Astoria Bank has continued to originate multifamily and commercial real estate loans, primarily for rent-controlled and rent-stabilized apartment buildings in New York City and its surrounding metropolitan area, as well as residential mortgage loans. Sterling represents that Astoria Bank offers a number of mortgage products that serve LMI borrowers and communities within its assessment areas, including State of New York Mortgage Agency loans for 1-4 family residences, cooperatives, and condominiums, in addition to a portfolio of affordable mortgage loan products for persons with incomes either below 80 or below 100 percent of the area median income level. Sterling represents that, from 2013 to 2016, Astoria Bank's participation in the Federal Home Loan Bank of New York's First Home Club down payment assistance program resulted in a number of individuals receiving grants and achieving home ownership. Sterling also represents that, from 2013 to 2016, Astoria Bank sponsored two affordable housing projects that resulted in grants for 532 units of affordable housing in its assessment areas. Sterling states that the majority of Astoria Bank's mortgage originations are sourced through Astoria Bank's correspondent lending channel, through which Astoria Bank purchases mortgage loans from third-party originators. Sterling represents that Astoria Bank continues to offer Small Business

Administration loans as well as lines of credit, installment loans, standby letters of credit, and equipment financing to assist small business owners.

Sterling represents that since the Astoria Bank Evaluation, Astoria Bank has focused its community development lending, investments, and grant activities on supporting nonprofit organizations that, among other actions, expand opportunities for responsible and sustainable homeownership by minority and LMI individuals through affordable housing projects, develop affordable housing and services for special needs populations, and engage in economic development activities to assist LMI individuals or neighborhoods. Sterling also represents that Astoria Bank's community development service activities have included, among other services, providing financial-related technical assistance to nonprofit community organizations through board service and other engagements, offering technical and financial advice to small businesses, engaging in homeownership and first-time homebuyer counseling, and volunteering in affordable housing construction and renovation projects.

Additional Supervisory Views

The Board has considered the results of a recent consumer compliance assessment of Sterling Bank conducted by OCC examiners, which incorporated a review of the bank's compliance risk-management program and the bank's compliance with consumer protection laws and regulations. The Board also has considered the results of a recent compliance examination of Astoria Bank conducted by OCC examiners, which included a review of the bank's consumer compliance function. The Board has conferred with the OCC regarding its review and has taken into consideration supervisory reviews and other relevant information. In addition, the Board has consulted with the Consumer Financial Protection Bureau.

Additional Convenience and Needs Considerations

In evaluating proposals under section 4 of the BHC Act, the Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Sterling represents that the proposal would provide customers of the combined organization access to additional or expanded services, due to an expanded network of branch and ATM locations in its market areas. Sterling represents that, with the exception of changes to Astoria Bank's mortgage lending operation, it does not intend to eliminate any material retail products or services offered by Astoria and would provide Astoria customers with a broader suite of commercial products and services. With respect to mortgage lending, Sterling represents that Sterling Bank would continue to make available a full range of residential mortgage products to customers of the combined organization through Sterling Bank's relationship with Freedom Mortgage. Moreover, Sterling represents that Sterling Bank will continue to offer residential mortgages to LMI individuals through the bank's Community Banking team. Sterling expects that the merger also would enable it to compete more effectively with national financial institutions in its assessment areas and improve its ability to meet the needs of its customers and the communities in its assessment areas.[35]

Conclusion on Convenience and Needs

The Board has considered all of 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, information obtained in consultations with the OCC, confidential supervisory information, information provided by Sterling, the public comments on the proposal, and other potential effects of the proposal on the convenience and needs of the communities to be served. Based on that

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[35] Sterling has committed to keep open all Astoria branches for a minimum of 90 days post consummation and will not make decisions regarding branch closures for 180 days in order to evaluate the combined branch network. Unrelated to the proposal, Sterling represents that Sterling Bank plans to relocate one branch and close two other branches, none of which are located in LMI census tracts. Sterling represents that Sterling Bank will comply with Section 42 of the Federal Deposit Insurance Act (12 U.S.C. § 1831r-1) and the Joint Policy Statement Regarding Branch Closings (64 Fed. Reg. 34844 (1999)) in connection with any such closings.

review, the Board concludes that the convenience and needs factor is consistent with approval.

Financial Stability

The Dodd-Frank Act amended section 4 of the BHC Act to require the Board to consider the extent to which a proposed acquisition, merger, or consolidation would result in greater risk to the stability of the United States banking or financial system.[36]

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.[37] 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.[38]

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in assets, or that results in a firm with less than $100 billion in

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[36] Section 604(e) of the Dodd-Frank Act, codified at 12 U.S.C. § 1843(j)(2)(A) (with respect to the acquisition of savings associations).

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

[38] For further discussion of the financial stability standard, see Capital One Order.

total assets, are generally not likely to pose systemic risks. Accordingly, the Board presumes that a proposal does not raise material financial stability concerns if the assets involved fall below either of these size thresholds, absent evidence that the transaction would result in a significant increase in interconnectedness, complexity, cross-border activities, or other risk factors.[39]

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. After consummation, Sterling would have approximately $29 billion in consolidated assets and, by any of a number of alternative measures of firm size, would not be likely to pose systemic risks. Both the acquirer and the target are predominately engaged in a variety of retail and commercial banking activities. The pro-forma organization would have minimal cross-border activities and would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would complicate resolution of the firm in the event of financial distress. In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose a significant risk to the financial system in the event of financial distress.

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.

Weighing of Public Benefits of the Proposal

As noted above, in connection with a proposal under section 4 of the BHC Act, the Board is required to "consider whether performance of the activity by a bank holding company or a subsidiary of such company can reasonably be expected to produce

[39] See People's United Financial, Inc., FRB Order No. 2017-08 at 25-26 (March 16, 2017). Notwithstanding this presumption, the Board has the authority to review the financial stability implications of any proposal. For example, an acquisition involving a global systemically important bank could warrant a financial stability review by the Board, regardless of the size of the acquisition.

benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, unsound banking practices, or risk to the stability of the United States banking or financial system."[40] As discussed above, the Board has considered that the proposed transaction would provide greater services, product offerings, and geographic scope to customers of Astoria Bank. In addition, the acquisition would ensure continuity and strength of service to customers of Astoria Bank.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y, Board precedent, and this Order, is not likely to result in significant adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, unsound banking practices, or risk to the stability of the United States banking or financial system. On the basis of the entire record, and for the reasons discussed above, the Board believes that the balance of benefits and potential adverse effects related to competition, financial and managerial resources, convenience to the public, financial stability, and other factors weighs in favor of approval of this proposal. Accordingly, the Board determines that the balance of the public benefits under the standard of section 4(j)(2) of the BHC Act is consistent with approval.[41]

Conclusion

Based on the foregoing and all the facts of record, the Board determines that the notice should be, and hereby is, approved.[42] In reaching its conclusion, the Board

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[40] 12 U.S.C. § 1843(j)(2).

[41] 12 U.S.C. § 1843(j)(2)(A).

[42] A commenter requested that the Board hold a public hearing on the proposal. The Board's regulations provide for a hearing on a notice filed under section 4 of the BHC Act if there are disputed issues of material fact that cannot be resolved in some other manner. 12 CFR 225.25(a)(2). Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views.

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 Sterling 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 proposal. 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 New York acting pursuant to delegated authority.

By order of the Board of Governors,[43] effective August 30, 2017.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

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12 CFR 262.3(e). The Board has considered the request in light of all the facts of record. Notice of the proposal was published in relevant newspapers of general circulation on April 19, 2017. The comment period ended on May 19, 2017. 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 comments do not present the commenter's 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 request for a public hearing on the proposal is denied.

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