

FEDERAL RESERVE SYSTEM

Cidade de Deus Cia. Comercial de Participações  
Nova Cidade de Deus Participações S.A.  
BBD Participações S.A.  
Fundação Bradesco  
Lecce Holdings S.A.  
Banco Bradesco S.A.  
Osasco, Brazil

Order Approving the Acquisition of a Bank

Banco Bradesco S.A. (“Bradesco”), a foreign banking organization subject to the provisions of the Bank Holding Company Act of 1956 (“BHC Act”);<sup>1</sup> Bradesco’s parent companies, Cidade de Deus Cia. Comercial de Participações (“Cidade”), Nova Cidade de Deus Participações S.A. (“Nova Cidade”), BBD Participações S.A. (“BBD”), and Fundação Bradesco (“Fundação”); and a direct subsidiary of Bradesco, Lecce Holdings S.A. (“Lecce”) (collectively, “Applicants”), all of Osasco, Brazil, have requested the Board’s approval to become bank holding companies under section 3 of the BHC Act,<sup>2</sup> by acquiring all of the voting shares of BAC Florida Bank (“BAC Bank”), Coral Gables, Florida, a state nonmember bank.<sup>3</sup>

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<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842.

<sup>3</sup> Under the proposal, Applicants would initially acquire approximately 99 percent of the voting shares of BAC Bank, and shortly thereafter, an interim-bank subsidiary of Applicants (“Interim Bank”) would merge with and into BAC Bank, with BAC Bank as the surviving entity. Upon consummation of the transaction, BAC Bank would operate as Lecce’s direct, wholly owned subsidiary. The merger of Interim Bank into BAC Bank is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”), pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). The FDIC approved the bank merger on June 16, 2020.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (84 Federal Register 34395 (July 18, 2019)). 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.

Bradesco, with consolidated assets of approximately \$276.5 billion, is the third largest bank in Brazil based on asset size.<sup>4</sup> Bradesco engages in retail and commercial banking and other financial activities throughout Brazil, including wealth management, insurance, and investment banking activities. Outside of Brazil, Bradesco operates in Argentina, the Cayman Islands, Hong Kong, Luxembourg, Mexico, the United Kingdom, and the United States. Bradesco operates in the United States primarily through an uninsured, federally licensed branch in New York, New York; a representative office in Miami, Florida; and a licensed broker-dealer, Bradesco Securities, Inc. (“Bradesco Securities”), New York, New York.

Bradesco’s four parent companies (collectively, “Parent Companies”) together own, directly or indirectly, approximately 74 percent of the voting shares of Bradesco.<sup>5</sup> Cidade, Nova Cidade, and BBD are non-operating companies, and their sole corporate purpose is to hold equity investments for their shareholders. Fundação is a private foundation that operates schools for students in Brazil. Bradesco and its Parent Companies are and would remain qualifying foreign banking organizations under the Board’s Regulation K and are treated as financial holding companies under section 4(l) of the BHC Act.<sup>6</sup>

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<sup>4</sup> Asset and ranking data for Bradesco are as of June 30, 2020, and are based on the exchange ratio on that date.

<sup>5</sup> The remaining 26 percent of Bradesco’s voting shares are publicly traded, and none of those shareholders own 5 percent or more of Bradesco’s voting shares. The Parent Companies also control Bradespar S.A., São Paulo, Brazil, a holding company with a non-controlling equity interest in a large mining company.

<sup>6</sup> 12 CFR 211.23(a); 12 U.S.C. § 1843(l).

BAC Bank, with consolidated assets of approximately \$2.3 billion, is the 423rd largest insured depository institution in the United States, controlling deposits of approximately \$1.9 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions<sup>7</sup> in the United States.<sup>8</sup> BAC Bank operates one deposit-taking office, which is located in Florida. BAC Bank is the 35th largest insured depository institution in Florida, with approximately \$1.9 billion in deposits, which represent 0.3 percent of the total amount of deposits of insured depository institutions in that state.<sup>9</sup> On consummation of this proposal, Applicants' U.S. operations would have assets that represent less than 1 percent of the total assets of insured depository institutions in the United States.

#### 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.<sup>10</sup> The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition or tend to create a monopoly in any 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 communities to be served.<sup>11</sup> Applicants do not currently control a commercial bank in the United States, and Applicants and BAC Bank do not compete directly in any retail banking market. The Department of Justice 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,

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<sup>7</sup> In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

<sup>8</sup> National asset and deposit data are as of June 30, 2020, unless otherwise noted.

<sup>9</sup> State deposit data are as of June 30, 2019, unless otherwise noted.

<sup>10</sup> 12 U.S.C. § 1842(c)(1)(A).

<sup>11</sup> 12 U.S.C. § 1842(c)(1)(B).

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 any relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

#### Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved, as well as the effectiveness of the institutions in combatting money laundering.<sup>12</sup> In its evaluation of financial factors, the Board reviews information regarding the financial condition of the organizations involved on both parent-only and consolidated bases, as well as information regarding the financial condition of the subsidiary depository institutions and the organizations' significant nonbanking operations, if applicable. In this evaluation, the Board considers a variety of information regarding capital adequacy, asset quality, liquidity, 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 involved in the

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<sup>12</sup> 12 U.S.C. § 1842(c)(2), (5), and (6). The Board has analyzed the effectiveness of Applicants' anti-money-laundering efforts in connection with the Board's assessment of whether Applicants are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.

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

The capital levels of Applicants exceed the minimum levels that would be required under the Basel Capital Accord and are considered to be equivalent to the capital levels that would be required of a U.S. banking organization.<sup>13</sup> Applicants appear to have adequate resources to absorb the costs of the proposal and complete the integration of the institutions' operations. In addition, future prospects are consistent with approval.<sup>14</sup>

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 Applicants' U.S. operations and BAC Bank, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by Applicants; the Board's supervisory experience and those of the other relevant bank supervisory agencies with the organizations; and the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering ("AML") laws, as well as information provided by a commenter. The Board also has consulted with Banco Central do Brasil ("Central Bank"), the agency with primary responsibility for the supervision of Brazilian banks and other financial institutions, including Bradesco.

The Board also has considered Applicants' plans for implementing the proposal. Applicants have conducted comprehensive due diligence and are devoting significant financial and other resources to address all aspects of the post-integration

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<sup>13</sup> The Board considered the total risk-based capital ratio, tier 1 risk-based capital ratio, common equity tier 1 risk-based capital ratio, and the ratio of tier 1 capital to total assets of Lecce, Bradesco, and each of the Parent Companies.

<sup>14</sup> To effect the merger of Applicants' subsidiary Interim Bank into BAC Bank, the existing shares of BAC Bank would be canceled; shareholders of BAC Bank (other than Applicants) would receive cash for their canceled shares, based on an exchange ratio; and shares of Interim Bank would be converted into shares of BAC Bank. Applicants have the financial resources to effect the proposed transaction.

process for this proposal. The Board also has considered Applicants' plans to withstand the potential impact of near-term economic conditions. In general, Applicants plan to continue the existing business of BAC Bank with largely the same management in place at the bank. The management of Applicants and BAC Bank have the experience and resources to operate the combined organization in a safe and sound manner.<sup>15</sup>

Section 3 of the BHC Act also prohibits the Board from approving a proposal unless the applicant provides adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act.<sup>16</sup> The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which Applicants operate and has communicated with relevant government authorities concerning access to information. In addition, Applicants have committed that, to the extent not prohibited by applicable law, they will make available to the Board such

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<sup>15</sup> A commenter expressed concern about Bradesco's management and cited a May 2019 news article regarding Brazilian authorities' anti-corruption efforts. The article stated that Brazilian prosecutors had issued arrest warrants for two Bradesco employees and were considering a civil lawsuit against Bradesco.

Bradesco asserts that the commenter has not provided information that reflects adversely on the competence of Bradesco's management or the ability of Bradesco to operate BAC Bank in a safe and sound manner. Bradesco represents that it has adopted and strictly implements rigorous compliance standards and observes high standards of conduct and ethics in its operations.

Bradesco and certain of its current and former executives entered into a commitment agreement with the Central Bank on May 29, 2020 (the "Agreement"), which among other things requires that Bradesco enhance its AML and foreign exchange procedures. Bradesco represents that the Agreement is pursuant to Brazilian law that allows for voluntary agreements only for nonmaterial supervisory matters.

The Board has considered the comments received and the Agreement as part of its review of Applicants' managerial resources. For the reasons discussed above, management of the Applicants is considered to be satisfactory from a supervisory perspective.

<sup>16</sup> 12 U.S.C. § 1842(c)(3)(A).

information on their operations and the operations of their affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act of 1978,<sup>17</sup> and other applicable federal laws. Applicants also have committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable them or their affiliates to make such information available to the Board.

Based on all the facts of record, the Board determines that considerations related to the financial condition and managerial resources and future prospects of the organizations involved in the proposal, as well as access to information by the Board, are consistent with approval.

#### Supervision or Regulation on a Consolidated Basis

In evaluating this application, and as required by section 3 of the BHC Act, the Board considered whether Bradesco and its Parent Companies are subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in their home country.<sup>18</sup> The Board has long held that “the legal systems for

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<sup>17</sup> 12 U.S.C. § 3101 *et seq.*

<sup>18</sup> 12 U.S.C. § 1842(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign banking organization is subject to consolidated home country supervision under the standards set forth in Regulation K. *See* 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank is subject to consolidated home country supervision if the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank’s overall financial condition and compliance with law and regulation. 12 CFR 211.24(c)(1)(ii). In assessing this standard under section 211.24 of Regulation K, the Board considers, among other indicia of comprehensive, consolidated supervision, the extent to which the home country supervisors (i) ensure that the bank has adequate procedures for monitoring and controlling its activities worldwide; (ii) obtain information on the condition of the bank and its subsidiaries and offices through regular reports of examination, audit reports, or otherwise; (iii) obtain information on the dealings and relationship between the bank and its affiliates, both foreign and domestic; (iv) receive from the bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the bank’s financial condition on a worldwide,

supervision and regulation vary from country to country, and comprehensive supervision or regulation on a consolidated basis can be achieved in different ways.”<sup>19</sup> In addition, the Board makes case-by-case, institution-specific determinations under the comprehensive supervision standard.<sup>20</sup>

*Bradesco*

The Board previously has determined, in connection with applications involving Bradesco and other banks in Brazil, that those banks were subject to comprehensive supervision on a consolidated basis by their home country supervisor, the Central Bank.<sup>21</sup> Bradesco continues to be supervised by the Central Bank on substantially the same terms and conditions. Based on all the facts of record, including consultation with the Central Bank, the Board determines that Bradesco continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

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consolidated basis; and (v) evaluate prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis. No single factor is essential, and other elements may inform the Board’s determination.

<sup>19</sup> See e.g., Banco de Credito e Inversiones S.A., FRB Order No. 2015-25 (September 21, 2015) (“BCI-EJY Order”); Industrial and Commercial Bank of China Limited, FRB Order No. 2012-4 (May 9, 2012) (“ICBC-CIC Order”); and China Investment Corporation, 96 Federal Reserve Bulletin B31 (2010).

<sup>20</sup> See BCI-EJY Order and ICBC-CIC Order.

<sup>21</sup> See Board Letter to Douglas Landy, Esq., Shearman & Sterling LLP (January 30, 2004). In addition, the Board previously has determined that other Brazilian banks were subject to comprehensive supervision on a consolidated basis by the Central Bank. See Board Letter to Bradley K. Sabel, Esq., Shearman & Sterling LLP (February 8, 2002), and Federal Reserve Bank of Atlanta Letter to Timothy J. Byrne, Esq., Shearman & Sterling LLP (November 7, 2019) (comprehensive consolidated supervision for Itaú Unibanco S.A.); Banco do Brasil, S.A., 98 Federal Reserve Bulletin 1 (2012); and Banco do Estado do Rio Grande do Sul S.A., 98 Federal Reserve Bulletin 39 (2012).



### *Bradesco's Parent Companies*

In evaluating this proposal, the Board also considered whether Bradesco's Parent Companies are subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in their home country. In considering prior applications involving nonbank parent companies of foreign banks, the Board has stated that the system of comprehensive supervision or regulation may vary, depending on the nature of the acquiring company and the proposed investment.<sup>22</sup>

Cidade, Nova Cidade, and BBD are private, non-operating companies that hold equity investments for their shareholders. Fundação is a private foundation that operates a large number of schools across Brazil and uses its investment in Bradesco to fund its educational initiatives. Fundação is subject to oversight by Brazilian authorities, including the Ministério Público ("MP"),<sup>23</sup> with respect to its educational initiatives and compliance with Brazilian laws regarding charitable foundations. The Parent Companies' individual and combined equity holdings consist primarily of Bradesco stock. For the most part, the managers and board members of the Parent Companies also are managers and directors of Bradesco

The Parent Companies are subject to oversight by the Central Bank with respect to the contagion and reputational risks that the Parent Companies may pose to Bradesco and its financial affiliates through investments or other relationships. As part of this periodic review, the Central Bank analyzes whether the Parent Companies' operations pose a risk of financial loss to Bradesco or its financial affiliates. Under Brazilian law, all transactions between Bradesco and its affiliates, including the Parent Companies, generally must be on arm's-length terms. The Central Bank receives and reviews financial information about the Parent Companies in connection with the Central Bank's annual risk and controls assessment of Bradesco and other supervised financial

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<sup>22</sup> See BCI-EJY Order and ICBC-CIC Order.

<sup>23</sup> The MP is a public prosecutor's office and has oversight over Fundação, focusing primarily on the use of the foundation's resources.

institutions. The Central Bank has legal authority to obtain additional information about the Parent Companies when appropriate. In addition, the MP and the Central Bank may share information about Fundação and its activities when appropriate. The Central Bank has a variety of tools to address risks that the Parent Companies may pose to the safety and soundness of Bradesco, including imposing additional capital requirements on Bradesco or restrictions on the bank's operations.

The Board has taken into account that the Parent Companies' proposed investment in BAC Bank would be indirect and through a foreign bank that is subject to consolidated supervision by the Central Bank. In addition, the Board has taken into account the structure and limited operations of the Parent Companies, including that their equity holdings consist primarily of Bradesco stock. Based on all the facts of record, the Board determines that the Parent Companies are subject to comprehensive supervision on a consolidated basis by their home country supervisor.

#### 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.<sup>24</sup> In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of the communities they serve, as well as other potential effects of the proposal on the convenience and needs of these communities, and places particular emphasis on the records of the relevant depository institutions under the Community Reinvestment Act of 1977 ("CRA").<sup>25</sup> The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with the institutions' safe and sound operation,<sup>26</sup> and requires the appropriate federal financial

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<sup>24</sup> 12 U.S.C. § 1842(c)(2).

<sup>25</sup> 12 U.S.C. § 2901 et seq.

<sup>26</sup> 12 U.S.C. § 2901(b).

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, in evaluating bank expansionary proposals.<sup>27</sup>

In addition, the Board considers the banks' overall records of compliance with consumer protection laws and regulations, which include their records of compliance with fair lending laws and regulations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and comments received on the proposal. The Board also may consider the institution's business model and marketing and outreach plans, the organization's plans after consummation, and any other information the Board deems relevant.

In assessing the convenience and needs factor in this case, the Board has considered all the facts of record, including reports of examination of the CRA performance of BAC Bank;<sup>28</sup> the consumer compliance, including fair lending, record of BAC Bank; the supervisory views of the FDIC; confidential supervisory information; information provided by Applicants; and the public comments on the proposal.

*Public Comments on the Proposal*

A commenter objected to the proposal and alleged disparities in the number of home purchase loans made by BAC Bank to African Americans and Hispanics, as compared to Asians, in the New York City Metropolitan Statistical Area ("New York City MSA"), based on data that BAC Bank reported under the Home Mortgage Disclosure Act of 1975 ("HMDA") for its 2017 mortgage-related lending activities.<sup>29</sup> In

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<sup>27</sup> 12 U.S.C. § 2903.

<sup>28</sup> Bradesco's New York branch is not authorized to take insured deposits and is not subject to the CRA.

<sup>29</sup> 12 U.S.C. § 2801 et seq.

addition, the commenter asserted that BAC Bank denied 100 percent of home purchase applications from Hispanics in the New York City MSA based on the bank's 2017 HMDA data. The commenter also alleged disparities in the number of home purchase loans made by BAC Bank to African Americans as compared to Whites in the Miami, Florida MSA, based on 2017 HMDA data. Furthermore, the commenter alleged that the proposal does not have a public benefit, including under the CRA, and that Bradesco plans to acquire BAC Bank to disproportionately serve affluent clients.

*BAC Bank's Business and Applicants' Response to the Public Comments*

BAC Bank offers a variety of products and services in the areas of personal banking, wealth management, corporate banking, institutional banking, and real estate financing. BAC Bank serves domestic and international customers, and, as previously noted, the bank's sole deposit-taking office is located in Florida.

In response to the public comments, Bradesco asserts that the fair lending and CRA records of BAC Bank do not support a conclusion that the bank has engaged in improper lending practices. Bradesco represents that BAC Bank has procedures in place to ensure compliance with fair lending laws, including annual fair-lending training for BAC Bank employees and board members, as well as an annual test of the bank's compliance with fair lending laws performed by auditors. In addition, Bradesco represents that it has a long record of serving the communities in which it operates and plans to continue BAC Bank's efforts to serve its communities. Bradesco notes that BAC Bank received an overall "Satisfactory" rating on its most recent CRA performance evaluation.

*Records of Performance under the CRA*

In evaluating the convenience and needs factor and CRA performance, 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. In this case, the Board considered the supervisory views of and information

provided by the FDIC.<sup>30</sup> In addition, the Board considered information provided by Applicants and a commenter.

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.<sup>31</sup> An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test ("Lending Test"), investment test ("Investment Test"), and service test ("Service Test") to evaluate the performance of large insured depository institutions, such as BAC Bank, in helping to meet the credit needs of the communities they serve. The Lending Test specifically evaluates an institution's 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 data reported under the HMDA, 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 a variety of factors, including (1) the number and amounts of home mortgage, small business, small farm, and consumer loans (as applicable) in the institution's CRA assessment areas ("AAs"); (2) the geographic distribution of the institution's lending, including the proportion and dispersion of loans in its AAs and the number and amounts of loans in low-, moderate-, middle-, and upper-income geographies; (3) the distribution of loans based on borrower characteristics,

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<sup>30</sup> See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

<sup>31</sup> 12 U.S.C. § 2906.

including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;<sup>32</sup> (4) the institution's community development lending, including the number and amounts of community development loans and their complexity and innovativeness; and (5) the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.<sup>33</sup> The Investment Test evaluates the number and amounts of qualified investments that benefit the institution's AAs, and the Service Test evaluates the availability and effectiveness of the institution's systems for delivering retail banking services and the extent and innovativeness of the institution's community development services.<sup>34</sup>

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different races, ethnic groups, or genders 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 often not available from HMDA data.<sup>35</sup> Consequently, the Board evaluates such disparities in the context of other information regarding the lending record of an institution.

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<sup>32</sup> 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).

<sup>33</sup> See 12 CFR 228.22(b).

<sup>34</sup> See 12 CFR 228.21 et seq.

<sup>35</sup> Other information 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.

### *CRA Performance of BAC Bank*

BAC Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of June 17, 2019 (“BAC Bank Evaluation”).<sup>36</sup> The bank received a “Low Satisfactory” rating for the Lending Test and “High Satisfactory” ratings for the Investment Test and Service Test.<sup>37</sup>

Examiners found that BAC Bank’s overall lending levels reflected good responsiveness to the credit needs of the bank’s AA. Examiners determined that the bank’s geographic distribution of loans reflected adequate penetration throughout the bank’s AA and that the bank’s distribution of borrowers reflected adequate penetration among individual borrowers of different income levels. Examiners noted that the bank’s lending performance in moderate-income census tracts was generally below the demographic data and aggregate lending in all three years covered by the evaluation, but noted that the bank demonstrated a capacity and willingness to lend in these areas. Examiners found that BAC Bank was an active mortgage lender and that the bank’s volume of lending activity was good, given the intense competition for loans in the AA. Examiners also found that the bank made use of innovative and flexible lending practices to serve AA credit needs.

Examiners determined that BAC Bank’s level of qualified investments demonstrated good responsiveness to the credit and community development needs of the bank’s AA, when considering available investment opportunities and competition. Examiners noted that BAC Bank’s qualified investments and donations specifically

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<sup>36</sup> The BAC Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business loans as reported under CRA data collection requirements, from January 2016 through December 2018. The evaluation period for community development loans, investments, and services was May 11, 2016, through June 17, 2019.

<sup>37</sup> The BAC Bank Evaluation included a full-scope evaluation of the bank’s sole AA, which includes two metropolitan divisions (“MDs”) in Florida: the Miami-Miami Beach-Kendall, Florida MD (“Miami MD”) and the Fort Lauderdale-Pompano Beach-Deerfield Beach, Florida MD.

responded to affordable housing, economic development, and community service needs within the bank's AA. Examiners found that BAC Bank's delivery systems were reasonably accessible to essentially all portions of the bank's AA. Examiners noted that the services and business hours offered by BAC Bank did not vary in a way that inconvenienced certain portions of the bank's AA, particularly LMI geographies or individuals. Examiners also noted that BAC Bank was a leader in providing community development services that benefitted organizations within the bank's AA.

With respect to BAC Bank's CRA performance in the Miami MD, an area of concern for the commenter, examiners found that the bank's lending levels reflected good responsiveness to the MD's credit needs. They also found that lending volume to LMI geographies and individuals in the MD was adequate. Examiners noted that BAC Bank used innovative and flexible lending practices in order to serve the needs of the Miami MD. Examiners found that the bank had a significant level of qualified investments and donations in the Miami MD and that the bank's delivery systems were reasonably accessible to essentially all portions of the Miami MD.

#### *Additional Supervisory Views*

The Board has consulted with the FDIC and considered BAC Bank's CRA and consumer compliance, including fair lending, records, as evidenced by the bank's most recent consumer compliance and CRA examinations. The FDIC considered the public comments received by the Board in connection with its review of the bank merger application related to the proposal.

The Board has taken the foregoing consultation and examinations into account in evaluating the proposal, including in considering whether Applicants have the experience and resources to ensure that the combined organization would help meet the credit needs of the communities to be served following consummation of the proposed transaction.

#### *Additional Convenience and Needs Considerations*

The Board also considers other potential effects of the proposal on the convenience and needs of the communities to be served. Applicants represent that, upon



consummation of the proposed transaction, they generally would maintain BAC Bank's current product offerings. In addition, Applicants represent that BAC Bank's existing CRA and fair lending efforts would largely be continued or enhanced where appropriate following the acquisition.

#### *Conclusion on Convenience and Needs Considerations*

The Board has considered all the facts of record, including the record of the relevant depository institution under the CRA, the institution's record of compliance with fair lending and other consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by Applicants, 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 review, the Board determines that the convenience and needs factor is consistent with approval.

#### Financial Stability

Section 3 of the BHC Act requires the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risks to the stability of the United States banking or financial system."<sup>38</sup>

To assess the likely effect of a proposed transaction on the stability of the United States 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.<sup>39</sup> These categories are not exhaustive, and additional

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<sup>38</sup> 12 U.S.C. § 1842(c)(7).

<sup>39</sup> Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

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 on the broader economy.<sup>40</sup>

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. In the United States, Applicants engage primarily in corporate banking activities through a U.S. branch and securities brokerage activities through Bradesco Securities. BAC Bank offers a variety of banking products and services, including those related to personal banking, wealth management, and corporate banking. Applicants have and, upon consummation of the proposal, would continue to have a small market share on a nationwide basis with respect to these products and services, and numerous competitors would remain. The combined organization in the United States would not exhibit an organizational structure, complex interrelationships, or unique characteristics that would pose a significant risk to the financial system in the event of 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.

The Board also has considered potential spillover effects from Brazil that could increase risk to the financial stability of the United States banking or financial system. Given the relatively small size of the target, the Board believes that the proposed transaction would pose minimal risk to the stability of the United States banking or financial system.

Accordingly, based on these and all other facts of record, the Board determines that considerations relating to financial stability are consistent with approval.

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<sup>40</sup> For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

## Conclusion

Based on the foregoing and all the facts of record, the Board determines that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. 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 fifteenth 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 under delegated authority.

By order of the Board of Governors,<sup>41</sup> effective October 7, 2020.

*Ann E. Misback (signed)*

Ann E. Misback  
Secretary of the Board

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<sup>41</sup> Voting for this action: Chair Powell, Vice Chair Clarida, Vice Chair for Supervision Quarles, and Governors Bowman and Brainard.