FRB Order No. 2019-01
January 10, 2019

FEDERAL RESERVE SYSTEM

First Busey Corporation
Champaign, Illinois

Order Approving the Merger of Bank Holding Companies

First Busey Corporation ("FBC"), Champaign, Illinois, a bank holding company within the meaning of the Bank Holding Company Act of 1956 ("BHC Act"),[1] has requested the Board's approval under section 3 of the BHC Act[2] to merge with The Banc Ed Corp. ("Ed Corp"), and thereby indirectly acquire The Bank of Edwardsville ("Ed Bank"), both of Edwardsville, Illinois. Following the proposed acquisition, Ed Bank would be merged into FBC's subsidiary bank, Busey Bank, Champaign, Illinois.[3]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (83 Federal Register 46488 (September 13, 2018)).[4] 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.

FBC, with consolidated assets of approximately $7.8 billion, is the 164th largest insured depository organization in the United States.[5] FBC controls

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[1] 12 U.S.C. § 1841 et seq.

[2] 12 U.S.C. § 1842.

[3] The merger of Ed Bank into Busey Bank is subject to approval by the Federal Deposit Insurance Corporation ("FDIC"), pursuant to section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act"). 12 U.S.C. § 1828(c). The FDIC approved the bank merger on December 6, 2018.

[4] 12 CFR 262.3(b).

[5] National asset data are as of June 30, 2018. National deposit, ranking, and market-share data are as of June 30, 2018, unless otherwise noted.

approximately $6.2 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. FBC controls Busey Bank, which operates in Illinois, Missouri, Indiana, and Florida. FBC is the 17th largest insured depository organization in Illinois, controlling deposits of approximately $5.0 billion, which represent 1.0 percent of the total deposits of insured depository institutions in that state.[6] FBC is the 25th largest insured depository organization in Missouri, controlling deposits of approximately $922.3 million, which represent 0.6 percent of the total deposits of insured depository institutions in that state.

Ed Corp, with consolidated assets of approximately $1.9 billion, is the 437th largest insured depository organization in the United States. Ed Corp controls approximately $1.6 billion in consolidated deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Ed Corp controls Ed Bank, which operates in Illinois and Missouri. Ed Corp is the 31st largest insured depository organization in Illinois, controlling deposits of approximately $1.6 billion, which represent 0.3 percent of the total deposits of insured depository institutions in that state. Ed Corp is the 264th largest insured depository organization in Missouri, controlling deposits of approximately $11.8 million, which represent less than 0.1 percent of the total deposits of insured depository institutions in that state.

On consummation of the proposal, FBC would become the 150th largest insured depository organization in the United States, with consolidated assets of approximately $9.6 billion, which represent less than 1 percent of the total assets of insured depository organizations in the United States. FBC would control consolidated deposits of approximately $7.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.[7] In Illinois, FBC would become the 15th largest insured depository organization, controlling deposits

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[6] State deposit data are as of June 30, 2018, unless otherwise noted.

[7] In this context, insured depository institutions include commercial banks, savings associations, and savings banks.

of approximately $6.6 billion, which represent 1.4 percent of the total deposits of insured depository institutions in that state. In Missouri, FBC would remain the 25th largest insured depository organization, controlling deposits of approximately $934.2 million, which represent approximately 0.6 percent of the total deposits of insured depository institutions in that state.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of the bank holding company, without regard to whether the transaction is prohibited under state law.[8] The Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.[9] In addition, the Board may not approve an interstate application if the bank holding company controls or, upon consummation of the proposed transaction, would control more than 10 percent of the total deposits of insured depository institutions in the United States or, in certain circumstances, if the bank holding company, upon consummation, would control 30 percent or more of the total deposits of insured depository institutions in any state in which the acquirer and target have overlapping banking operations.[10]

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[8] 12 U.S.C. § 1842(d)(1)(A).

[9] 12 U.S.C. § 1842(d)(1)(B).

[10] 12 U.S.C. § 1842(d)(2)(A) and (B). For purposes of section 3(d) of the BHC Act, the acquiring and target institutions have overlapping banking operations in any state in which any bank to be acquired is located and the acquiring bank holding company controls any insured depository institution or a branch. The Board considers a bank to be located in the states in which the bank is chartered, headquartered, or operates a branch. See 12 U.S.C. § 1841(o)(4)–(7).

For purposes of the BHC Act, the home state of FBC is Illinois, and Ed Bank is located in Illinois and Missouri.[11] FBC and Busey Bank are well capitalized and well managed under applicable law, and Busey Bank has an overall "Outstanding" rating under the Community Reinvestment Act of 1977 ("CRA").[12] Missouri has no statutory minimum age requirements that apply to the proposal,[13] and Ed Bank has been in existence for more than five years.

On consummation of the proposed transaction, FBC would control less than 1 percent of the total amount of consolidated deposits of insured depository institutions in the United States. Illinois imposes a 30 percent limit on the total amount of in-state deposits that a single banking organization may control,[14] and Missouri imposes a 13 percent limit.[15] In each of these states, the only states in which FBC and Ed Corp have overlapping banking operations, the combined banking organization would control less than the total amount of in-state deposits that a single banking organization may control. The Board has considered all other requirements under section 3(d) of the BHC Act, including Busey Bank's record of meeting the convenience and needs of the communities it serves. Accordingly, in light of all the facts of record, the Board may approve the proposal under section 3(d) of the BHC Act.

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[11] See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later.

[12] 12 U.S.C. § 2901 et seq.

[13] Missouri law prohibits the interstate acquisition of a Missouri bank that has been in existence for fewer than 5 years. See Mo. Ann. Stat. § 362.077(1). Missouri's minimum age requirements do not apply to the proposal because Ed Bank is a state bank that is not chartered under Missouri law.

[14] 205 Ill. Comp. Stat. 5/21.3(a).

[15] Mo. Ann. Stat. § 362.915.

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.[16] 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.[17]

Busey Bank and Ed Bank compete directly in the St. Louis, Missouri, banking market ("St. Louis market").[18] The Board has considered the competitive effects of the proposal in this banking market. In particular, the Board has considered the number of competitors that would remain in the market; the relative share of total deposits in insured depository institutions in the market ("market deposits") that FBC would control;[19] the concentration levels of market deposits and the increase in this level,

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[16] 12 U.S.C. § 1842(c)(1).

[17] 12 U.S.C. § 1842(c)(1)(B).

[18] The St. Louis market is defined as the city of St. Louis, Missouri; Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, and Washington counties, all of Missouri; Roark, Boeuf, Canaan, and Brush Creek townships, including the cities of Hermann and Owensville, all in Gasconade County, Missouri; Boone township in Crawford County, Missouri; Loutre township in Montgomery County, Missouri; Bond, Calhoun, Clinton, Jersey, Macoupin, Madison, Monroe, and St. Clair counties, all of Illinois; the western part of Randolph County, Illinois, defined by Route 3 on the east and the Kaskaskia River on the south (including the cities of Red Bud, Ruma, and Evansville, Illinois); Washington County, Illinois (minus Ashley and DuBois townships); and the entire city of Centralia, Illinois.

[19] State deposit and market share data are as of June 30, 2018, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors to commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market

as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Bank Merger Competitive Review guidelines ("DOJ Bank Merger Guidelines");[20] and other characteristics of the market.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Bank Merger Guidelines in the St. Louis market. On consummation of the proposal, the St. Louis market would remain unconcentrated as measured by the HHI, according to the DOJ Bank Merger Guidelines. The change in HHI would be small and numerous competitors would remain in the St. Louis market. [21]

The DOJ also has conducted a review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market.

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

[20] 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), available at www.justice.gov/opa/pr/2010/August/10-at-938.html.

[21] FBC operates the 18th largest depository institution in the St. Louis market, controlling approximately $922.3 million in deposits, which represent approximately 1.0 percent of market deposits. Ed Corp operates the 9th largest depository institution in the St. Louis market, controlling approximately $1.6 billion in deposits, which represent approximately 1.8 percent of market deposits. On consummation of the proposed transaction, FBC would become the 7th largest depository organization in the market, controlling deposits of approximately $2.5 billion, which represent approximately 2.8 percent of market deposits. The HHI in the St. Louis market would increase by 3 points to 805, and 131 competitors would remain in the 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 St. Louis market or in any other relevant banking market. Accordingly, the Board determines that competitive considerations are consistent with approval.

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under section 3 of the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved.[22] 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. 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 proposal in light of their financial and managerial resources and the proposed business plan.

[22] 12 U.S.C. § 1842(c)(2), (5), and (6).

FBC and Busey Bank are well capitalized, and the combined organization would remain so on consummation of the proposal. The proposed transaction is a bank holding company merger that is structured as a cash and stock purchase, with a subsequent merger of the subsidiary depository institutions.[23] The asset quality, earnings, and liquidity of both Busey Bank and Ed Bank are consistent with approval, and FBC appears to have adequate resources to absorb the related costs of the proposal and to complete the integration of the institutions' operations. In addition, the future prospects of the institutions 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 FBC, Ed Corp, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by FBC; the Board's supervisory experiences and those of other relevant bank supervisory agencies with the organizations; the organizations' records of compliance with applicable banking, consumer protection, and anti-money-laundering laws; and information provided by the commenters.

FBC, Ed Corp, and their subsidiary depository institutions are each considered to be well managed. FBC's directors and senior executive officers have knowledge of and experience in the banking and financial services sectors, and FBC's risk-management program appears consistent with approval of this expansionary proposal.

The Board also has considered FBC's plans for implementing the proposal. FBC has conducted comprehensive due diligence and is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for

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[23] To effect the transaction, each share of Ed Corp common stock would be converted into the right to receive a cash amount and FBC common stock, based on an exchange ratio. FBC has the financial resources to effect the proposed transaction.

this proposal. In general, FBC would implement its risk-management policies, procedures, and controls at the combined organization, and these are considered acceptable from a supervisory perspective.[24] In addition, FBC's management has the experience and resources to operate the combined organization in a safe and sound manner, and FBC plans to integrate Ed Corp's existing management and personnel in a manner that augments FBC's management.[25]

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

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served.[26] In its evaluation, the Board considers whether the relevant institutions are helping to meet the credit needs of these communities, as well as other potential effects of the proposal on the convenience and needs of the communities to be served, and places particular emphasis on the records of the relevant depository institutions under the CRA. The CRA requires the federal bank 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 operations,[27] and requires the appropriate

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[24] FBC represents that it may adopt risk-management policies and procedures from Ed Corp, and these are considered acceptable from a supervisory perspective.

[25] Following consummation of the holding company merger, an individual on the board of directors of Ed Corp would join the board of directors of FBC.

[26] 12 U.S.C. § 1842(c)(2).

[27] 12 U.S.C. § 2901(b).

federal bank 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.[28]

In addition, the Board considers the banks' overall compliance records and recent fair lending examinations. Fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of their race, ethnicity, or certain other characteristics. The Board also considers the assessments of other relevant supervisors, the supervisory views of examiners, other supervisory information, information provided by the applicant, and public comments on the proposal. The Board also may consider the acquiring 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 Busey Bank and Ed Bank, the fair lending and compliance records of both banks, the supervisory views of the FDIC, confidential supervisory information, information provided by FBC, and the public comments on the proposal.

Public Comments on the Proposal

The Board received a letter from a commenter, representing 15 community organizations, objecting to the proposal on the basis of Busey Bank's CRA record in the St. Louis, Missouri, metropolitan area ("St. Louis area").[29] The commenters asserted that Busey Bank has failed to maintain a high level of lending and serving in LMI neighborhoods within the St. Louis area since it merged with Pulaski Bank, National Association ("Pulaski Bank"), in 2016. The commenters expressed concern regarding the total percentage of loans that Busey Bank originated to LMI borrowers and communities

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[28] 12 U.S.C. § 2903.

[29] FBC submitted a comment that it received from a community organization in support of the proposal. The organization represented that Busey Bank has a record of assisting community development programs in the St. Louis area.

within the St. Louis area, as reflected in Home Mortgage Disclosure Act ("HMDA") data from 2016 and 2017. The commenters argued that Busey Bank's lending to LMI borrowers lagged behind peer institutions and the lending record of Pulaski Bank.

In addition, the commenters expressed concern regarding the potential effect of the proposal on lending to Hispanic and African American borrowers within the St. Louis area. Specifically, the commenters stated that Ed Bank is a leader in lending to Hispanic borrowers due in part to the bank's innovative mortgage products and bilingual branch in Fairmont City, Illinois. The commenters urged Busey Bank to maintain the innovative products and services offered by Ed Bank in order to better serve the Hispanic community. In addition, the commenters expressed concern regarding the total percentage of loans that each of Busey Bank and Ed Bank originated to African American borrowers within the St. Louis area, as reflected in 2016 and 2017 HMDA data. The commenters urged Busey Bank to provide commitments that describe how it plans to meet the credit needs of African American borrowers and communities.

The commenters also criticized Busey Bank's record of community development lending, investments, and services within the St. Louis area. The commenters asserted that Ed Bank is a leader in community development activities and expressed concern that the proposal could negatively impact communities currently served by Ed Bank.

The commenters requested that approval of the proposal be conditioned on Busey Bank adopting a community benefits agreement with commitments specific to lending, branches, services, community development lending and investments, and community engagement.[30]

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[30] The Board consistently has 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 private party. See, e.g., Synovus Financial Corp. and Synovus Bank, FRB Order No. 2018-25 at 12 n. 30 (December 7, 2018); TriCo Bancshares, FRB Order No. 2018-13 at 9 n.20 (June 6, 2018); Citigroup Inc., 88 Federal Reserve Bulletin 485 (2002); Fifth Third Bancorp, 80 Federal Reserve Bulletin 838, 841

Businesses of the Involved Institutions and Response to the Public Comments

FBC operates primarily through Busey Bank, which operates a network of branches in Illinois, Missouri, Indiana, and Florida. Busey Bank offers a variety of products and services, including checking and savings accounts, mortgage and business loans, and asset management services.

Ed Corp operates primarily through Ed Bank, which operates a network of branches in Illinois and Missouri. Ed Bank offers a variety of products and services, including checking and savings accounts, mortgage and business loans, and wealth management services.

FBC asserts that the HMDA data referenced by the commenters do not fully reflect Busey Bank's CRA record. Specifically, FBC argues that the HMDA data are affected by demographic and economic factors in the St. Louis area that impact home ownership for LMI borrowers. Furthermore, FBC represents that Busey Bank's entry into the St. Louis area banking market resulted in slight disruptions to the bank's mortgage lending, which FBC attributes to the post-merger integration of Pulaski Bank and Busey Bank's sale of out-of-footprint mortgage offices. FBC asserts that Busey Bank is currently better geographically positioned and has strengthened its overall lending activity and focus on markets served by the bank.

In addition, FBC notes that the HMDA data referenced by the commenters do not suggest a pattern of discrimination or the presence of a fair lending issue at Busey Bank. FBC asserts that Busey Bank is committed to the fair and equal treatment of all customers and represents that the bank maintains appropriate controls to ensure compliance with applicable fair lending laws and regulations.

(1994). 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.

FBC represents that Busey Bank currently offers mortgage products and loan programs within the St. Louis area that are designed to help meet the credit needs of LMI borrowers and communities. FBC also represents that Busey Bank is a leader in making community development loans within the St. Louis area based on volume, responsiveness, and complexity. Further, FBC asserts that Busey Bank has a strong record of community outreach, including providing employees paid time off to serve their communities. FBC represents that employees of Busey Bank have focused their volunteer activities within the St. Louis area on efforts that support community services, affordable housing, and the revitalization and stabilization of neighborhoods. In addition, FBC represents that Busey Bank partners with community organizations in the St. Louis area that support, among other things, LMI borrowers, affordable housing, small business lending, and economic development. FBC represents that Busey Bank plans to strengthen its CRA program through the proposed acquisition by adopting innovative CRA-related products and services currently offered by Ed Bank, including the MyCommunity Home Loan product and multilingual services at branch locations.

Records of Performance under the CRA

In evaluating the CRA performance of the involved institutions, the Board generally considers each institution's most recent CRA performance evaluation, as well as other information and supervisory views from the relevant federal financial supervisor or supervisors, which in this case is the FDIC with respect to both institutions.[31] In addition, the Board considers information provided by the applicant and by public commenters.

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.[32] An

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[31] See Interagency Questions and Answers Regarding Community Reinvestment, 81 Fed. Reg. 48506, 48548 (July 25, 2016).

[32] 12 U.S.C. § 2906.

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 financial supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply a lending test to evaluate the performance of large insured depository institutions, such as Busey Bank and Ed 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 HMDA,[33] 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 the institution's lending 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, including, for home mortgage loans, the number and amounts of loans to low-, moderate-, middle-, and upper-income individuals;[34] (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

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[33] 12 U.S.C. § 2801 et seq.

[34] 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).

of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies.[35] Large institutions also are subject to an investment test, which evaluates the number and amounts of qualified investments that benefit their AAs, and a service test, which evaluates both the availability and effectiveness of their systems for delivering retail banking services and the extent and innovativeness of their community development services.[36]

The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution's credit decisions is not available from HMDA data.[37] Consequently, the Board evaluates HMDA data disparities in the context of other information regarding the lending record of the institution.

CRA Performance of Busey Bank

Busey Bank was assigned an overall "Outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of September 30, 2015 ("Busey Bank Evaluation").[38] The bank received "Outstanding" ratings for the Lending Test and

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[35] See 12 CFR 228.22(b).

[36] See 12 CFR 228.21 et seq.

[37] 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.

[38] The Busey Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA and small business and small farm loans as reported under CRA data collection requirements, from January 1, 2013, through June 30, 2015. The evaluation period for community development loans, investments, and services was August 30, 2012, through September 30, 2015.

Service Test, and the bank received a “High Satisfactory” rating for the Investment Test.[39]

Examiners found that Busey Bank’s overall lending levels reflected excellent responsiveness to the credit needs of its AAs and that Busey Bank originated a substantial majority of its loans within its AAs. Examiners also found that the geographic distribution of the bank’s loans reflected excellent penetration throughout the bank’s combined AAs. Further, examiners found that, given the product lines offered by Busey Bank, its distribution of loans to borrowers reflected excellent penetration among retail customers of different income levels and business customers of different sizes. Examiners noted that Busey Bank was a significant home mortgage and small business lender throughout its combined AAs, as well as a leader in community development lending. Examiners also noted that Busey Bank exhibited an excellent record of serving the credit needs of LMI individuals, very small businesses, and the most economically disadvantaged areas of its AAs, including through extensive use of flexible lending programs.

Examiners found that Busey Bank had a significant level of community development investments and grants within its combined AAs and occasionally used complex investments to support community development initiatives. Examiners also found that Busey Bank was a leader in providing community development services, and found that the bank’s facilities and delivery systems were readily accessible to all portions of the bank’s AAs. In addition, examiners found that the bank’s services,

[39] The Busey Bank Evaluation included a full-scope evaluation of all or parts of the Champaign-Urbana, Illinois Metropolitan Statistical Area (“MSA”); the Bloomington-Pontiac, Illinois Combined Statistical Area; the Peoria, Illinois MSA; the Indianapolis-Carmel-Anderson, Indiana MSA; and the Cape Coral-Fort Myers, Florida MSA. Limited-scope evaluations were performed of all or parts of the Decatur, Illinois MSA; the Shelby County, Illinois Non-MSA; the North Port-Sarasota-Bradenton, Florida MSA; and the Punta Gorda, Florida MSA. Busey Bank entered the St. Louis, Missouri-Illinois Multistate MSA in 2016, after the Busey Bank Evaluation was completed.

including business hours, did not vary in a way that inconvenienced certain portions of the bank's AAs, particularly LMI census tracts and individuals.

FBC's Efforts Since the Busey Bank Evaluation

FBC states that, since the Busey Bank Evaluation, Busey Bank has maintained its high standards with respect to community engagement. FBC notes that in 2017, Busey Bank formed a Fair and Responsible Banking Department within its Risk Management Division that is responsible for driving the bank's CRA efforts within its AAs and managing the bank's fair lending program. FBC represents that Busey Bank's employees have continued to support various community initiatives, with a focus on affordable housing, financial literacy, and economic development. Further, FBC represents that Busey Bank offers a variety of loan products designed to assist LMI borrowers through features such as down-payment assistance, grants, and forgivable second mortgages.

In addition, FBC states that Busey Bank has strengthened its small business lending since the Busey Bank Evaluation. For example, FBC represents that Busey Bank was one of the largest providers of U.S. Small Business Administration loans in the St. Louis area during 2016 and 2017. FBC also represents that Busey Bank was recognized by a local publication in 2017 as one of the best banks in the St. Louis area for providing services and resources to small business owners.

CRA Performance of Ed Bank

Ed Bank received an overall rating of "Satisfactory" at its most recent CRA performance evaluation by the FDIC, as of May 22, 2017 ("Ed Bank Evaluation").[40] The

[40] The Ed Bank Evaluation was conducted using Large Institution CRA Examination Procedures. Examiners reviewed mortgage loans reported pursuant to HMDA, and small business loans reported under CRA data collection requirements, from January 1, 2014, through December 31, 2016. The evaluation period for community development lending, investments, and services was July 28, 2014, through May 22, 2017.

bank received “High Satisfactory” ratings for the Lending Test and the Service Test, and the bank received a “Low Satisfactory” rating for the Investment Test.[41]

Examiners concluded that Ed Bank’s lending levels reflected good responsiveness to the credit needs of the bank’s AA. Examiners found that the bank made a substantial majority of its small business, small farm, and home loans within its AA, and the geographic distribution of the bank’s loans reflected good penetration throughout the bank’s AA. Examiners also found that, given the product lines offered by Ed Bank, its distribution of lending by borrower income reflected good penetration among retail customers of different income levels and business customers and farms of different sizes. Examiners concluded that Ed Bank had an excellent record of making home mortgage loans to LMI borrowers, and the bank was a leader in making community development loans within its AA.

Examiners found that Ed Bank’s community development investments showed adequate responsiveness to the credit needs of the bank’s AA. Examiners noted that the bank occasionally used innovative and/or complex investments that supported community development initiatives. Examiners noted that Ed Bank provided a relatively high level of community development services, including financial education resources and homebuyer workshops. In addition, examiners noted that the bank’s services did not vary in a way that inconvenienced portions of the bank’s AA, particularly LMI census tracts and individuals.

Views of the FDIC

In its review of the proposal, the Board consulted with the FDIC regarding Busey Bank’s and Ed Bank’s CRA, consumer compliance, and fair lending records. The FDIC reviewed and approved the Bank Merger Act application related to the proposal and, in doing do, considered adverse comments that were similar to the comments submitted to the Board on the BHC Act application. The Board has considered the

[41] The Ed Bank Evaluation included an evaluation of the bank’s sole AA, which consists of parts of the St. Louis, Missouri-Illinois Multistate MSA.

results of the most recent consumer compliance examinations of Busey Bank and Ed Bank conducted by FDIC examiners, which included reviews of the banks' compliance management programs and the banks' compliance with consumer protection laws and regulations. The Board has taken this information, as well as the CRA performance records of Busey Bank and Ed Bank, into account in evaluating the proposal, including in considering whether FBC has the experience and resources to ensure that Busey Bank would help meet the credit needs of the communities within its AAs following 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. FBC represents that, following consummation of the bank merger, the combined bank would retain the full range of products and services currently offered by Busey Bank and Ed Bank. FBC represents that customers of Ed Bank would gain access to new products and services, including Busey Bank's health savings accounts, insured cash sweep services, and person-to-person mobile banking services. In addition, FBC represents that customers of Busey Bank would benefit by receiving access to, among other things, mortgage lending products currently offered by Ed Bank, including the MyCommunity Home Loan product, which is specifically designed to meet the needs of LMI borrowers and communities. FBC represents that customers of both banks would benefit from a larger branch and ATM network.

FBC represents that Busey Bank would continue to utilize its current products, programs, and procedures, along with those adopted from Ed Bank, to meets its obligations under the CRA. FBC further represents that it would work together with existing partners of Busey Bank and Ed Bank, including community groups, in order to achieve Busey Bank's goals for the bank's CRA and fair lending programs.

Conclusion on Convenience and Needs Considerations

The Board has considered all the facts of record, including the records of the relevant depository institutions under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, supervisory views of the FDIC, confidential supervisory information, information provided by FBC, 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 concludes 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."[42]

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.[43] 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 on the broader economy.[44]

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[42] 12 U.S.C. § 1842(c)(7).

[43] Many of the metrics considered by the Board measure an institution's activities relative to the United States financial system.

[44] For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

The Board's experience has shown that proposals involving an acquisition of less than $10 billion in total assets, or that result in a firm with less than $100 billion in 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.[45]

In this case, the Board has considered information relevant to risks to the stability of the United States banking or financial system. The proposal involves a target that has less than $10 billion in total assets and a pro forma organization of less than $100 billion in total assets. Both the acquirer and the target are predominately engaged in retail and commercial banking activities.[46] 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 United States 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.

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[45] 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.

[46] FBC and Ed Corp both offer a range of retail and commercial banking products and services. FBC has, and as a result of the proposal would continue to have, a small market share in these products and services on a nationwide basis.

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 FBC with all the conditions imposed in this order, including receipt of all required regulatory approvals, and on any 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 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 Chicago, acting under delegated authority.

By order of the Board of Governors,[47] effective January 10, 2019.

Ann E. Misback (signed)

Ann E. Misback
Secretary of the Board

[47] Voting for this action: Chairman Powell, Vice Chairman Clarida, Vice Chairman for Supervision Quarles, and Governors Brainard and Bowman.