

FEDERAL RESERVE SYSTEM

CIT Group, Inc.
Livingston, New Jersey

Order Approving the Acquisition of a Bank Holding Company

CIT Group, Inc. (“CIT Group”), Livingston, New Jersey, a financial holding company within the meaning of the Bank Holding Company Act of 1956 (“BHC Act”),¹ and its subsidiary, Carbon Merger Sub LLC, New York, New York, have requested the Board’s approval under section 3 of the BHC Act² to acquire IMB Holdco LLC (“IMB Holdco”) and thereby indirectly acquire OneWest Bank, National Association (“OneWest Bank”), both of Pasadena, California. Immediately following the proposed acquisition, CIT Group’s subsidiary bank, CIT Bank, Salt Lake City, Utah, would be merged into OneWest Bank, with OneWest Bank being the surviving entity.³

CIT Group, with consolidated assets of approximately \$47.9 billion, is the 42nd largest insured depository organization in the United States, controlling approximately \$15.9 billion in deposits, which represent less than 1 percent of the total

¹ 12 U.S.C. § 1841 et seq.

² 12 U.S.C. § 1842.

³ The merger of CIT Bank into OneWest Bank is subject to the approval of the Office of the Comptroller of the Currency (“OCC”) pursuant to section 18(c) of the Federal Deposit Insurance Act. 12 U.S.C. § 1828(c). Upon consummation of the bank merger, CIT Group intends to change the name of the combined bank to CIT Bank, National Association.

amount of deposits of insured depository institutions in the United States.⁴ CIT Group controls CIT Bank, which operates a single, nonretail banking office in Salt Lake City, Utah, soliciting nationwide deposits through an Internet-based deposit-taking platform. CIT Bank is the 10th largest insured depository institution in Utah, with approximately 3.1 percent of the total deposits in insured depository institutions in that state.

IMB Holdco, with total consolidated assets of \$21.8 billion, is the 70th largest insured depository organization in the United States, controlling approximately \$14.1 billion in deposits, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. IMB Holdco controls OneWest Bank, which operates solely in California. OneWest Bank is the 13th largest insured depository institution in California, with approximately 1.4 percent of the total deposits in insured depository institutions in that state.

On consummation of this proposal, CIT Group would become the 41st largest insured depository organization in the United States by deposits, controlling approximately \$30 billion in deposits, which represent less than 1 percent of the total deposits of insured depository institutions in the United States. CIT Group would become the 36th largest depository organization in the United States by assets, with consolidated assets of approximately \$70 billion. Because CIT Bank and OneWest Bank do not have overlapping operations, the combined bank would continue to rank as the 10th and 13th largest insured depository institution in Utah and California, respectively.

Public Comment on the Proposal

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published in the Federal Register (79 Federal Register 51333 (August 28, 2014) and 80 Federal Register 7595 (February 11, 2015)) and in

⁴ Asset and nationwide deposit-ranking data are as of December 31, 2014, unless otherwise noted. State deposit data are as of June 30, 2014, unless otherwise noted. In this context, insured depository institutions include commercial banks, savings banks, and savings and loan associations.

accordance with the Board's Regulation Y and Rules of Procedure.⁵ The time for submitting comments has expired. The Board extended the initial period for public comment to accommodate the broad public interest in this proposal, providing interested persons until February 26, 2015, a total period of approximately six months, to submit written comments.

In light of the significant public interest in the proposal, the Board held a public meeting in Los Angeles, California, to provide interested persons an opportunity to present oral comments on the factors that the Board must review under the BHC Act.⁶ Approximately 111 individuals provided oral testimony at the public meeting, a subset of which also submitted written comments.⁷ In total, approximately 2,364 individuals and organizations submitted comments on the proposal orally, in writing, or both. Commenters included community groups, nonprofit organizations, customers of the two banking organizations, a member of Congress, and other interested organizations and individuals.

A large number of commenters supported the proposal.⁸ Many of these commenters contended that the proposal would benefit communities in California, including through increased employment, business development opportunities, and access to resources and services provided by the combined institution. Commenters also commended OneWest Bank for its commitment to local communities and described favorable experiences with the small business, community development, and mortgage

⁵ 12 CFR 225.16(b); 12 CFR 262.3(b).

⁶ The public meeting was held jointly by the Board and the OCC on February 26, 2015, at the Los Angeles Branch of the Federal Reserve Bank of San Francisco.

⁷ The Board permitted commenters who requested to participate in the public meeting but were unable to attend to have their written comments presented by other participants at the meeting.

⁸ Approximately 2,177 commenters supported the proposal, of which approximately 2,093 commenters submitted substantially identical form letters. Of these commenters, approximately 51 commenters provided oral comments in support of the proposal.

programs of the OneWest organization. In addition, commenters praised CIT Group and IMB Holdco's charitable contributions and noted that officers and employees of these institutions frequently provide valuable resources and services to community organizations.

A significant number of commenters either opposed the proposal, requested that the Board approve the proposal only subject to certain conditions, or expressed concerns about the proposal.⁹ Many commenters questioned whether the proposal would result in public benefits, arguing that both organizations are the successors to failed institutions and have received significant government assistance since 2008.

Commenters also expressed concerns about the impact of the proposal on the financial stability of the U.S. banking or financial system given that the combined organization would have more than \$50 billion in assets. In addition, commenters expressed concerns about the level of CIT Bank's small business lending in certain markets and argued that CIT Bank should invest more in the communities in which it accepts Internet deposits.

A significant number of comments in opposition to the proposal related to OneWest Bank. Many commenters criticized the mortgage lending, servicing, and foreclosure practices of OneWest Bank, including with respect to its home equity conversion mortgage loan ("reverse mortgage loan") products.¹⁰ Commenters alleged that OneWest Bank, among other things, engaged in wrongful foreclosures, deprived consumers of their property, unfairly denied mortgage modifications or engaged in

⁹ Approximately 187 commenters opposed the proposal. Of these commenters, approximately 39 commenters submitted individualized written comments, and approximately 88 commenters submitted substantially identical form letters. Approximately 60 persons provided oral comments in opposition to the proposal. Two commenters, the California Reinvestment Coalition and National People's Action, submitted petitions in opposition to the proposal, with the names of approximately 15,559 and 6,500 individuals, respectively.

¹⁰ Commenters alleged that the number of consumer complaints the bank has received concerning reverse mortgage loans are indicative of issues with its lending and servicing practices regarding this product.

harmful servicing tactics during the loss mitigation process, deceived mortgage borrowers and failed to inform them of their rights, and foreclosed improperly upon the houses of nonborrowing spouses.

Many commenters also raised concerns about OneWest Bank's performance under the Community Reinvestment Act ("CRA")¹¹ and the bank's compliance with fair lending laws and regulations. In this regard, commenters alleged that OneWest Bank does not meet the needs of low- and moderate-income ("LMI") and minority communities in its product offerings, charitable contributions, small business lending, branch locations, and marketing. A number of commenters alleged that there are racial disparities in the bank's small business lending and its origination and servicing of certain mortgage products.

A number of commenters expressed concerns regarding the impact of the proposal on financial stability, asserting that the proposal would result in an institution with greater than \$50 billion in assets that would be "too big to fail." Some commenters alleged that CIT Group is materially interconnected with the economy and with other companies that are important to the stability of the financial system. Commenters also raised concerns about the amount of assets at the combined organization that would not have observable market prices.

In evaluating the statutory factors under the BHC Act, the Board considered the information and views presented by all commenters, including information presented at the public meeting and in written submissions. The Board also considered all the information presented in the application and supplemental filings by CIT Group, various reports filed by the relevant companies, publicly available information, and other information and reports. In addition, the Board consulted with the relevant financial supervisory agencies and reviewed confidential supervisory information, including examination reports on the depository institution holding companies and the depository institutions involved. After a review of all the facts of record, and for the reasons

¹¹ 12 U.S.C. § 2901 *et seq.*

discussed in this order, the Board has concluded that the statutory factors it is required to consider under the BHC Act are consistent with approval of the proposal.

Factors Governing Board Review of the Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks.¹² These factors include the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the CRA of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system. In proposals involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits as a percentage of the total deposits controlled by insured depository institutions in the United States and in relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.

Interstate and Deposit Cap Analysis

Section 3(d) of the BHC Act generally provides that, if certain conditions are met, the Board may approve an application by a bank holding company to acquire control of a bank in a state other than the home state of the bank holding company without regard to whether the transaction is prohibited under state law.¹³ Under this section, the Board may not approve an application that would permit an out-of-state bank holding company to acquire a bank in a host state if the bank has not been in existence for the lesser of the state statutory minimum period of time or five years.¹⁴ In addition, the

¹² 12 U.S.C. § 1842(c).

¹³ 12 U.S.C. § 1842(d)(1)(A).

¹⁴ 12 U.S.C. § 1842(d)(1)(B).

Board may not approve an interstate application if the bank holding company controls or would control more than 10 percent of the total deposits of insured depository institutions in the United States, or 30 percent or more of the total deposits of insured depository institutions in the target bank's home state or in any state in which the acquirer and target have overlapping banking operations.¹⁵

For purposes of the BHC Act, the home state of CIT Group is Utah, and OneWest Bank's home state is California.¹⁶ CIT Group is well capitalized and well managed under applicable law, and CIT Bank has a satisfactory CRA rating. There are no minimum age requirements under California law that apply to CIT Group's acquisition of IMB Holdco and OneWest Bank.¹⁷

On consummation of the proposed transaction, CIT Group would control less than 1 percent of the total amount of consolidated deposits in insured depository institutions in the United States. In addition, the combined organization would control \$14.1 billion (or approximately 1.4 percent) and \$13.9 billion (or approximately 3.1 percent) of the total amount of deposits of insured depository institutions in California and Utah, respectively, which are the two states in which the combined organization

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

¹⁶ See 12 U.S.C. § 1841(o)(4). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. A national bank's home state is the state in which the main office of the bank is located.

¹⁷ The only age requirement under California state law concerns interstate bank mergers where the surviving bank is an out-of-state bank. See Cal. Fin. Code § 1685(a). However, this age requirement is not applicable to the proposed transaction, which involves mergers of holding companies and an interstate bank merger where the surviving bank will be a national bank that maintains its main office in California.

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

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant market. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.¹⁸

CIT Group and IMB Holdco do not directly compete in any retail banking market. Based on all the facts of record, including the differences in business models, products, and methods for providing services to customers, 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.¹⁹

Financial, Managerial, and Other Supervisory Considerations

In reviewing a proposal under the BHC Act, the Board considers the financial and managerial resources and the future prospects of the institutions involved. In its evaluation of financial factors, the Board reviews the financial condition of the organizations involved on both parent-only and consolidated bases, as well as the financial condition of the subsidiary depository institutions and the organizations'

¹⁸ 12 U.S.C. § 1842(c)(1)(B).

¹⁹ 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, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. The Board evaluates the financial condition of the combined organization, including its capital position, asset quality, liquidity, and earnings prospects, and the impact of the proposed funding of the transaction. The Board also considers the ability of the organization to absorb the costs of the proposal and 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.

CIT Group and CIT Bank are well capitalized, and the combined organization would remain so on consummation of the proposed acquisition. The proposed transaction is a bank holding company merger that is structured as a cash and share exchange.²⁰ The asset quality, earnings, and liquidity of CIT Bank and OneWest Bank are consistent with approval, and CIT Group appears to have adequate resources to absorb the costs of the proposal and to complete integration of the institutions' operations. In addition, future prospects are considered consistent with approval. Based on its review of the record, the Board finds that CIT Group has sufficient financial resources to effect the proposal.²¹

²⁰ As proposed, IMB Holdco would ultimately be merged into CIT Group, and each IMB Holdco ownership interest would be converted into a right to receive CIT Group common stock and cash, based on an exchange ratio. CIT Group has the financial resources to fund the exchange.

²¹ Some commenters alleged that CIT Group plans to pay dividends to shareholders before becoming subject to enhanced prudential standards pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, 124 Stat. 1376, 1423-32 (2010), codified at 12 U.S.C. § 5365, and the Board's Regulation YY, 12 CFR Part 252. The Board has considered the financial resources of the combined organization, including the effect of anticipated capital distributions, and concludes that financial considerations are 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 CIT Group, IMB Holdco, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered information provided by CIT Group, the Board's supervisory experiences with CIT Group and IMB Holdco and those of other relevant bank supervisory agencies with the organizations, and the organizations' records of compliance with applicable banking and anti-money-laundering laws.

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

The Board also has considered CIT Group's plans for implementing the proposal. CIT Group is devoting significant financial and other resources to address all aspects of the post-acquisition integration process for this proposal. CIT Group would implement its risk-management policies, procedures, and controls at the combined organization, which would be supplemented to address the additional business lines and risks associated with IMB Holdco's and OneWest Bank's operations, and these are considered acceptable from a supervisory perspective. In addition, management of CIT Group and IMB Holdco has the experience and resources that should allow the combined organization to operate in a safe and sound manner,²² and CIT Group plans to integrate

²² Commenters alleged that CIT Group would pay excessive compensation to the executives from IMB Holdco and OneWest Bank who would become executives of the combined organization. CIT Group has the resources to pay the proposed compensation, and the level of compensation does not raise safety and soundness concerns. In determining incentive compensation for executives at IMB Holdco and OneWest Bank, as well as those at CIT Group, the applicant also is expected to follow the guidance

OneWest Bank's existing management and personnel in a manner that augments CIT Group's management.²³

Based on all the facts of record, including CIT Group's supervisory record, managerial and operational resources, and plans for operating the combined institutions after consummation, and comments received on the proposal,²⁴ the Board concludes that

issued by the Board regarding incentive compensation. See Guidance on Sound Incentive Compensation Policies, 75 Federal Register 36396 (June 25, 2010).

In addition, some commenters expressed concerns regarding the combined organization's managerial resources to comply with enhanced prudential standards pursuant to section 165 of the Dodd-Frank Act and the Board's Regulation YY. CIT Group has the financial and managerial resources to comply with the Board's regulations implementing section 165 of the Dodd-Frank Act, and the Board will monitor CIT Group's compliance with these regulations through the supervisory process.

²³ On consummation, the chairman of IMB Holdco and a director of OneWest Bank would be added to CIT Group's board of directors. In addition, the chairman of the boards of IMB Holdco and OneWest Bank would hold the senior executive officer positions of vice chairman of CIT Group and chairman of the combined bank, while the president of IMB Holdco and OneWest Bank would become a co-president of CIT Group and president and chief executive officer of the combined bank.

Some commenters expressed concerns about CIT Group's managerial resources to service residential mortgages and reverse mortgage loans, given CIT Group's relative lack of experience in mortgage servicing. As mentioned above, CIT Group plans to integrate OneWest Bank's existing management and personnel in a manner that augments CIT Group's management and capacity consistent with the combined organization's scope of activities, and CIT Group has devoted substantial resources to planning for the integration of OneWest Bank's business operations.

²⁴ Commenters expressed concern about the level of racial and ethnic diversity among OneWest Bank's employees and officers and about OneWest Bank's efforts to do business with minority-owned suppliers. However, other commenters praised OneWest Bank's diversity, stating that minority individuals represented a good proportion of the makeup of OneWest Bank's employees and executives and that the combined bank would include representatives from Hispanic, Asian, and African American communities on its board of directors and would establish spending targets with women and minority-owned businesses. The Board believes that these contentions and concerns are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. See Bank of America Corporation, 90 Federal Reserve

considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal, as well as the records of effectiveness of CIT Group and IMB Holdco in combatting money-laundering activities, are consistent with approval.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board considers the effects of the proposal on the convenience and needs of the communities to be served. In its evaluation of the 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.²⁵ In addition, the Board considers the banks' overall compliance record, the results of recent fair lending examinations and other supervisory assessments; the supervisory views of examiners; other supervisory information; and comments received on the proposal. The Board also may consider the applicant institution's business model, marketing and outreach plans, plans following consummation, and any other information the Board deems relevant.

In considering this proposal, the Board has considered all the facts of record, including reports of examination of the CRA performance of CIT Bank and OneWest Bank, the fair lending and compliance records of both banks, confidential supervisory information, information provided by CIT Group, and public comments received on the proposal. The Board also consulted with the Consumer Financial Protection Bureau ("CFPB") and the OCC concerning their evaluations of OneWest Bank's compliance with fair lending and consumer protection laws and regulations and the comments received on the proposal. The CFPB did not identify any supervisory

Bulletin 217, 223 n.31 (2004); see also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973) ("Western Bancshares").

²⁵ 12 U.S.C. § 1842(c)(2).

concerns regarding OneWest Bank.²⁶ The OCC considered the comments opposing the proposal, including allegations against OneWest Bank, as part of the OCC's review of the proposed merger of OneWest Bank and CIT Bank and has approved the bank merger.

A. Summary of Public Comments on Convenience and Needs

As noted above, the Board held a public meeting to facilitate receiving comments on the proposal from interested members of the public. A significant number of comments were submitted, orally and/or in writing, through this process.

Many commenters supported the proposal.²⁷ These commenters generally believed that the CIT Group and OneWest Bank organizations provide valuable services to their communities. In particular, commenters contended that the proposal would result in a strong bank that would support the retention and creation of jobs in the communities it serves. Commenters also contended that the proposal would expand opportunities for LMI and minority borrowers and businesses by increasing access to credit and fostering partnership opportunities between the combined organization and groups that serve LMI and minority individuals. These commenters also praised OneWest Bank and its management for the bank's community outreach efforts and support for various community development programs and initiatives, including programs that help provide mortgage counseling for minority borrowers, mentoring for at-risk youth, and services and assistance for service-disabled veterans. Commenters also noted OneWest Bank's support for school, faith-based, arts, and financial literacy programs, many of which target minority and LMI individuals.

²⁶ Several commenters represented that they had filed complaints with the CFPB regarding OneWest Bank's mortgage foreclosure practices.

²⁷ A number of commenters alleged that OneWest Bank inappropriately solicited public comments in support of the application, including by providing financial incentives. The Board invites comments from all members of the public that have an interest in the application. The Board considers all timely and substantive comments on an application without regard to the commenters' motivation for supporting or opposing the application.

The Board received a large number of comments opposing the proposal on the basis of the CRA records of the involved institutions. A significant number of comments alleged that CIT Bank is not meeting its obligations to help meet the credit needs of all the communities across the United States from which it collects deposits through its Internet-based deposit-taking platform.²⁸ Many commenters also expressed concerns that the combined organization's future performance under the CRA will not be commensurate with the combined bank's size and capacity.

The Board also received a significant number of comments that were critical of OneWest Bank's CRA performance record, including its "low satisfactory" rating on the Investment Test in its most recent CRA evaluation. Commenters criticized the number of branches maintained by OneWest Bank in LMI census tracts and the level of loans to businesses with less than \$1 million in annual revenues extended by OneWest Bank. Additionally, commenters alleged that the bank's community development lending and investment activities have not been adequately responsive to community credit needs.²⁹ Commenters also alleged racial disparities in OneWest Bank's lending activities. Some commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles, California, area based on data reported for 2012 under the Home Mortgage Disclosure Act of 1975 ("HMDA").³⁰

²⁸ For example, one commenter alleged that CIT Bank has collected a significant amount of deposits from Monroe County, New York, but has provided only minimal small business lending in the area, with none of the lending going to businesses with annual revenues of less than \$1 million.

²⁹ Commenters alleged that, compared to its peers, OneWest Bank has a low level of charitable contributions as a percentage of deposits and that only a small percentage of the bank's charitable contributions are directed towards supporting affordable housing. Moreover, commenters alleged that OneWest Bank has no multifamily loan product to support affordable housing development.

³⁰ 12 U.S.C. § 2801 et seq.

A significant number of commenters alleged that OneWest Bank's mortgage servicing and foreclosure practices and policies harmed consumers and did not comply with legal requirements, including those of the California Homeowner Bill of Rights.³¹ In particular, commenters alleged that OneWest Bank failed to keep accurate records and paperwork related to mortgage loans as part of the loan modification and foreclosure processes; unfairly accelerated loans and denied loan modifications;³² failed to provide a single point of contact to assist borrowers; pursued foreclosure proceedings against borrowers during the loan modification process; inappropriately advised borrowers to default on their loans in order to qualify for loan modification programs and subsequently foreclosed on the defaulted loans; and failed to inform consumers of their rights at the time of reverse mortgage loan origination, maturity, or default. Commenters also alleged that OneWest Bank prohibited the spouse and other related parties to deceased reverse mortgage loan borrowers from satisfying the mortgage and retaining the property, and improperly required the estates of reverse mortgage loan borrowers to record trusts in public property records. Commenters also contended that OneWest Bank inflated property appraisals and thereby frustrated the efforts of the surviving spouse and heirs of deceased reverse mortgage loan borrowers to keep their family homes.³³ Some commenters also alleged that OneWest Bank has allowed its stock of foreclosed real property to fall into disrepair and thereby has contributed to blight in, and adversely affected, the relevant communities.

³¹ 2012 Cal. Stat. 2314 (codified in scattered sections of Cal. Civ. Code).

³² For example, commenters alleged that, on the basis of performance data reported by servicers participating in the Home Affordable Modification Program ("HAMP"), OneWest Bank was more likely to foreclose on its borrowers than other banks.

³³ Under regulations of the Department of Housing and Urban Development, when a reverse mortgage loan is due and payable (e.g., after the death of the borrower), a surviving nonborrowing spouse can elect to satisfy the mortgage and retain the property securing the loan for the lesser of the unpaid principal balance or 95 percent of the property's appraised value. See 26 CFR 206.125(a); Department of Housing and Urban Development, Mortgagee Letter No. 2015-15 (June 12, 2015), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=15-15ml.pdf>.

B. The Businesses of the Involved Institutions

CIT Group is primarily a commercial lender that provides financing, leasing, and advisory services to middle market companies in North America in a variety of industries, and equipment financing and leasing to companies worldwide in the transportation industry. CIT Group is among the largest originators of Small Business Administration (“SBA”) 7(a) loans, which help start-up and existing small businesses. Consistent with the consolidated organization’s business focus, CIT Bank offers commercial credit products to middle market companies in various industries throughout the United States, with commercial and industrial loans making up approximately 70 percent, while residential real estate loans making up only 3 percent, of the bank’s total loan portfolio.³⁴ While CIT Bank does not make a significant amount of small business loans within its Salt Lake City, Utah, assessment area, almost 9 percent of CIT Bank’s small business loans originated nationally were originated to businesses located in LMI census tracts.

IMB Holdco and OneWest Bank were organized to acquire assets and assume deposits of the failed IndyMac Bank, F.S.B. (“IndyMac”), from the Federal Deposit Insurance Corporation (“FDIC”).³⁵ OneWest Bank operates throughout Southern California, providing a broad range of traditional retail and commercial banking products and services through a network of 73 branches. Currently, approximately 60 percent of total loans at OneWest Bank are loans obtained from the acquisitions of IndyMac and two other institutions from the FDIC.³⁶ OneWest Bank has been focusing its efforts on

³⁴ CIT Bank, Consolidated Report of Condition and Income, at 18 (data as of March 31, 2015).

³⁵ OneWest Bank also acquired assets and assumed deposits of two failed depository institutions, La Jolla Bank, FSB, of Rancho Santa Fe, and First Federal Bank of California, F.S.B., of Santa Monica, all in California.

³⁶ Although one-to-four family residential loans represent approximately 55 percent of total loans, many of these loans were acquired in the acquisitions mentioned above.

transforming from a thrift to a commercial bank.³⁷ Most of the loans originated by OneWest Bank through its own operations have focused on commercial lending and commercial real estate lending, although the bank continues to offer retail and consumer products and services.

C. Records of Performance under the CRA

The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation,³⁸ 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 LMI neighborhoods.³⁹ In addition to compliance with the requirements of the CRA, fair lending laws require all lending institutions to provide applicants with equal access to credit, regardless of the applicant's race, ethnicity, or certain other characteristics.

The Board evaluates an institution's performance record in light of examinations by the appropriate federal supervisors of the CRA performance of the relevant institutions.⁴⁰ 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.⁴¹ An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site

³⁷ OneWest Bank also has sold its third-party residential mortgage servicing rights, exited the prepaid card business, and continues to explore a sale of Financial Freedom Acquisition LLC ("Financial Freedom"), a subsidiary of OneWest Bank engaged in the reverse mortgage loan business.

³⁸ 12 U.S.C. § 2901(b).

³⁹ 12 U.S.C. § 2903.

⁴⁰ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642, 11665 (March 11, 2010).

⁴¹ 12 U.S.C. § 2906.

evaluation by the institution's primary federal supervisor of the institution's overall record of lending in its communities.

In general, federal financial supervisors apply lending, investment, and service tests to evaluate the performance of a large insured depository institution in helping to meet the credit needs of the communities it serves. The lending test specifically evaluates the institution's home mortgage, small business, small farm, and community development lending to determine whether the institution is helping to meet the credit needs of individuals and geographies of all income levels. As part of the lending test, examiners review and analyze an institution's HMDA data, in addition to small business, small farm, and community development loan data collected and reported under the CRA regulations, to assess an institution's lending activities with respect to borrowers and geographies of different income levels. The institution's lending performance is based on the number and amount of home mortgage, small business, small farm, and consumer loans, as applicable, in the institution's assessment areas; the geographic distribution of such loans, including the proportion and dispersion of the institution's lending in its assessment areas and the number and amount of loans in low-, moderate-, middle-, and upper-income geographies; the distribution of such loans based on borrower characteristics, including the number and amount of home mortgage loans to low-, moderate-, middle-, and upper income individuals;⁴² the institution's community development lending, including the number and amount of community development loans and their complexity and innovativeness; and the institution's use of innovative or flexible lending practices to address the credit needs of LMI individuals and geographies. Consequently, the Board considers the overall CRA rating assigned to the bank's performance, as well as the bank's rating on the lending test, to be important indicators,

⁴² Examiners also consider the number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less, small business and small farm loans by loan amount at origination, and consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals. See, e.g., 12 CFR 228.22(b)(3).

when taken into consideration with other factors, in determining whether a depository institution is helping to meet the credit needs of its communities.

CRA Performance of CIT Bank

CIT Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the FDIC, as of March 18, 2013 (“CIT Bank Evaluation”).⁴³ Examiners noted that the bank originated an adequate amount of community development loans, which supported affordable housing, revitalization, and stabilization in the bank’s assessment area.⁴⁴ Examiners also found the level of qualified investments and grants to be responsive to the community development needs of the bank’s assessment area and broader statewide area. Examiners found CIT Bank’s provision of community development services to be adequate.⁴⁵ Examiners did note, however, that CIT Bank made only limited use of innovative or complex qualified investments.

⁴³ CIT Bank is a limited purpose bank for purposes of the CRA and was evaluated under the community development test. The evaluation period for the CIT Bank Evaluation was from November 15, 2010, through December 31, 2012. Examiners reviewed the level of CIT Bank’s qualified community development loans, investments, grants, and services in the bank’s designated assessment area of Salt Lake County, Utah. Examiners also evaluated the qualified community development activities of CIT Group over the same evaluation period.

⁴⁴ Several commenters criticized CIT Bank for designating Salt Lake County, Utah, as its CRA assessment area while soliciting deposits nationwide. Under the CRA, depository institutions delineate their own assessment areas, subject to certain criteria, and examiners investigate whether the examined institution’s assessment areas comply with these criteria. See, e.g., 12 CFR 228.41. In addition, when examining a limited purpose bank such as CIT Bank under the CRA, examiners consider community development activities engaged in by the bank outside its assessment areas if the bank has adequately addressed the needs of its assessment areas. See, e.g., 12 CFR 228.25(e).

⁴⁵ The bank’s employees volunteered their skills and expertise to the credit committees and boards of a number of local nonprofit organizations that primarily served the needs of LMI families in the assessment area.

CIT Bank's efforts since the 2013 CRA Evaluation

Since the CIT Bank Evaluation, CIT Bank has implemented an FDIC-approved CRA strategic plan that CIT Group contends includes measurable goals to obtain an outstanding CRA rating.⁴⁶ CIT Group stated that CIT Bank increased its community development loans and investment activities in 2013 and 2014 to a level that exceeded the target level needed to obtain an outstanding CRA rating under the strategic plan.⁴⁷ Similarly, CIT Group reported that the level of community development services provided by CIT Bank's employees in 2013 and 2014 exceeded the target number of hours needed to obtain an outstanding CRA rating.

CIT Group noted that the organization is a major commercial lender and helps meet the credit needs of the communities it serves, consistent with its business focus, through, among other things, small business lending. CIT Group is the largest originator of SBA 7(a) loans in the United States and also originates SBA 504 certified development company program loans. These loans help start-up and existing small businesses with financing guaranteed for a variety of general business purposes and encourage economic development within a community by providing small businesses with long-term, fixed-rate financing to acquire major fixed assets for expansion or modernization. Moreover, the CIT organization has been among the top small business lenders in the United States and has targeted its lending to, among others, women-, veteran-, and minority-owned businesses.

⁴⁶ The CRA regulations provide that the appropriate federal banking agency will assess a bank's record of meeting the credit needs of its assessment areas under a strategic plan if, among other things, the bank invites public comment on the plan and the plan is approved by such agency. The FDIC approved CIT Bank's strategic plan dated January 2013, pursuant to 12 CFR 345.27.

⁴⁷ CIT Bank reported that it made its community investments in nonprofit organizations focusing on supporting affordable housing; alleviating poverty, homelessness, and unemployment; promoting community development; and providing foreclosure counseling.

CRA Performance of OneWest Bank

OneWest Bank was assigned an overall “Satisfactory” rating at its most recent CRA performance evaluation by the OCC, as of February 6, 2012 (“OneWest Bank Evaluation”).⁴⁸ OneWest Bank received a “High Satisfactory” rating for the Lending Test, a “Low Satisfactory” rating on the Investment Test, and a “High Satisfactory” rating on the Service Test.⁴⁹ Examiners noted that OneWest Bank’s geographic distribution of loans was excellent and that the bank’s community development lending performance was good.

Examiners noted that OneWest Bank’s overall lending levels reflected adequate responsiveness to assessment area credit needs given the bank’s business strategy, volume of lending, and competition.⁵⁰ Examiners found that the bank’s geographic distribution of home mortgage loans, home refinance lending, and home purchase lending was excellent, and that the bank’s distribution of multifamily lending was good. Examiners also noted that OneWest Bank exhibited good community

⁴⁸ The OneWest Bank Evaluation was conducted using Large Bank CRA Examination Procedures. The evaluation period for the OneWest Bank Evaluation was from March 19, 2009, through September 30, 2011. At the request of OneWest Bank’s management, examiners also considered HMDA-reportable loans originated by Financial Freedom.

⁴⁹ The OneWest Bank Evaluation included a full-scope assessment review of the Los Angeles–Long Beach–Glendale, California Metropolitan Division (“Los Angeles AA”). A limited-scope review was performed in the Oxnard–Thousand Oaks–Ventura, California Metropolitan Statistical Area (“MSA”); the Riverside–San Bernardino–Ontario, California MSA; the San Diego–Carlsbad–San Marcos, California MSA; and the Santa Ana–Anaheim–Irvine, California Metropolitan Division.

⁵⁰ With respect to the Lending Test, examiners placed more weight on OneWest Bank’s performance in the Los Angeles AA. Examiners noted that while the bank held a 4.72 percent market share by total dollars of deposits in the Los Angeles AA, it only held a 0.23 percent market share of HMDA loans. Examiners found this disparity to be reasonably explained on two bases. First, the Los Angeles AA saw high competition in mortgage lending, as several major banks were the dominant home mortgage lenders in the area. Second, the bank’s business focus was on improving the performance of existing loans through modification programs, such as HAMP, rather than on loan origination.

development lending performance. Examiners found that the bank engaged in a high volume of community development lending that addressed identified community needs and made extensive use of flexible and innovative lending products, primarily a large offering of loss mitigation programs throughout all assessment areas.

Examiners rated the bank's performance under the Investment Test as "Low Satisfactory," with the dollar volume of qualifying investments, grants, and donations being viewed as adequate.⁵¹ Nevertheless, examiners noted that the bank's investment activities exhibited good responsiveness to the credit and community development needs of the Los Angeles AA.⁵² Moreover, examiners noted the bank's commitment to help meet identified community development needs, including through the bank management's role in leading the "Steps to Success" program, which promotes financial literacy among LMI and at-risk youth in the Los Angeles AA. Examiners called the program "innovative" and "the only one of its kind."

In evaluating the Service Test, examiners found that the bank's branch distribution in its assessment areas was good, with 13 percent of all branches located in LMI census tracts. Examiners noted that the operating hours of the bank's branches were

⁵¹ Some commenters alleged that OneWest Bank has a poor record of charitable donations compared to peer institutions. The Board notes that neither the CRA nor the agencies' implementing rules require that institutions engage in charitable giving.

⁵² For example, within the Los Angeles AA, the bank invested in Low Income Housing Tax Credits ("LIHTC") that helped fund an affordable housing project and placed deposits with nine different minority-owned financial institutions. See 26 U.S.C. § 42.

Commenters criticized OneWest Bank for investing primarily in CRA-qualifying mortgage-backed securities and not making equity equivalent investments. In addition, a number of commenters alleged that CIT Group and OneWest Bank provided grants to organizations in return for their support of the merger proposal and refused to invest in or lend to organizations that opposed the proposal. The CRA does not require that institutions meet the credit needs of the communities they serve by making equity equivalent investments and does not authorize the federal banking agencies to direct a bank's community development investment or lending activities to specific groups, individuals, projects, or types of investments.

generally similar at all locations, regardless of the income level of the geography. Examiners observed that, during the evaluation period in the Los Angeles AA, OneWest Bank provided a relatively high level of community development services that were responsive to a variety of community development needs and that the bank's board and management had developed relationships to ensure continued innovative and sustainable community development services.⁵³

OneWest Bank's efforts since the 2012 CRA Evaluation

CIT Group represented that since OneWest Bank's last CRA evaluation, the bank increased its community development lending almost tenfold. In terms of services, OneWest Bank employees have provided numerous hours of community service since 2011. OneWest Bank also has partnered with Operation HOPE, a nonprofit entity that teaches financial literacy, to create the Hope Inside program, which offers small business counseling at OneWest Bank's Northridge, California, branch office. In addition, OneWest Bank has more than doubled its amount of LIHTC commitments, and the bank's affordable housing investments have resulted in the creation of numerous affordable housing units. OneWest Bank also has provided grants that have allowed

⁵³ Technical and financial assistance provided included fundraising, financial education, and service on various boards of directors with organizations whose primary focus was providing assistance to LMI individuals. The bank also provided education to customers seeking loan modifications through videos and information posted on the bank's website.

Some commenters criticized OneWest Bank for not providing checking accounts for LMI consumers, alleging that OneWest Bank requires that customers make an initial deposit of at least \$100 and maintain a \$1,000 deposit balance to receive paper account statements without paying a monthly fee. CIT Group represents that the combined bank will reduce its affordable checking account opening balance requirement to \$25.

Some commenters urged OneWest Bank to commit to waiving ATM fees for public assistance recipients. Although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available on certain terms or at certain rates, the CRA neither requires an institution to provide any specific types of products or services nor prescribes the costs charged for them.

numerous individuals to receive homebuyer education and foreclosure prevention counseling.

CRA Efforts of the Combined Organization

CIT Group represents that the combined bank would implement a community benefits plan to help meet the needs of the combined bank's CRA assessment areas.⁵⁴ Under that plan, the combined bank would extend \$3.8 billion in CRA-reportable lending in its assessment areas; meet or exceed peer benchmarks for lending to LMI borrowers and in LMI census tracts; achieve Preferred Lender status under the SBA

⁵⁴ A number of commenters criticized CIT Group's CRA plan for the combined bank, alleging that the CRA plan sets lower CRA activity goals than commitments made by other banks operating in southern California. A commenter alleged that CIT Group underreported the combined bank's California deposits, thereby making it more difficult to compare the combined bank's proposed CRA activities with that of other depository institutions. Another commenter alleged that the CRA plan for the combined organization proposes fewer CRA activities than had been committed by the proposed president and chief executive officer of the combined bank during his service as an executive at another financial institution.

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 organization. *See, e.g., Citigroup Inc.*, 88 Federal Reserve Bulletin 485 (2002); *Fifth Third Bancorp.*, 80 Federal Reserve Bulletin 838, 841 (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.

Some commenters alleged that OneWest Bank is performing poorly compared to the goals set in the bank's existing CRA strategic plan. This plan is not intended to form the basis for the OCC's evaluation of the combined bank's CRA performance pursuant to 12 CFR 25.27. The OCC will examine the combined bank under the CRA lending, investment, and service tests applicable to large banks.

Commenters expressed concerns that the combined bank's CRA assessment areas will not include the entire area from which the combined bank solicits deposits. As noted above, CIT Bank solicits, and the combined bank expects to solicit, deposits nationwide through the Internet. As noted above, under the CRA, depository institutions delineate their own assessment areas, subject to certain criteria, and examiners investigate whether the examined institution's assessment areas comply with these criteria. *See, e.g.,* 12 CFR 228.41.

Preferred Lenders Program; develop a small business loan and technical assistance referral program to refer businesses to community development financial institutions; and develop a policy to prefer nonprofit organizations when selling certain real estate and distressed loans originated by the combined bank.

CIT Group also represents that the combined bank would make CRA qualified investments at a level of 8 percent of tier 1 deployed capital and would donate \$5 million annually to nonprofit organizations that provide or support affordable housing, education, financial literacy, workforce development, health and human services to LMI individuals, programs for at-risk youth, and technical assistance for small business owners. In addition, CIT Group stated that the combined bank would locate 15 percent of its branches and ATMs in LMI census tracts and would provide 2,100 hours of CRA volunteer service.

CIT Group has represented that OneWest Bank's commercial and consumer lending platforms would complement CIT Group's small and middle market financing platforms. CIT Group further asserts that the proposal would accelerate CIT Group's transformation into a more traditional commercial banking organization with a balanced retail and commercial operation that includes OneWest Bank's traditional retail branch deposit-funding base.

In response to allegations regarding CIT Bank's CRA performance, CIT Group noted that CIT Bank received a "Satisfactory" rating in its most recent CRA public evaluation. Moreover, CIT Group stated that the enhanced lending and earning capacity of the combined organization would improve its ability to meet its CRA obligations.

OneWest Bank's activities in LMI communities largely reflect the branch network of the institutions whose assets and liabilities OneWest Bank has acquired. Since its formation, OneWest Bank has taken steps to increase its presence in LMI communities, including through partnerships with businesses located in these communities.

OneWest Bank's small business lending to businesses with less than \$1 million in revenues is in line with peer institutions. Moreover, OneWest Bank is a

significant participant in the SBA's 504 Loan Program, which provides financing for major fixed assets such as equipment and real estate; these SBA loans tend to be larger in size and, consequently, tend to be made to businesses with more than \$1 million in annual revenues. Moreover, CIT Group is one of the largest SBA lenders.

In response to commenters' contention that OneWest Bank has a poor record in mortgage foreclosures and reverse mortgage loan servicing, OneWest Bank argued that many of the alleged mortgage servicing issues relate back to practices engaged in by IndyMac prior to OneWest Bank's acquisition of IndyMac assets from the FDIC as receiver of IndyMac. OneWest Bank also noted that, as part of a mortgage foreclosure Consent Order with the OCC, the bank remediated harms resulting from past deficiencies in connection with the Independent Foreclosure Review and instituted extensive changes to its residential mortgage servicing and foreclosure activities to ensure that these activities are conducted in a safe and sound manner going forward.⁵⁵

As part of its approval of the bank merger, the OCC has required the combined bank to submit a revised public CRA plan, with input from members of the public, for the OCC's review and written determination of no supervisory objection.⁵⁶ In

⁵⁵ The Consent Order resulted from interagency on-site reviews of several mortgage servicing companies, including OneWest Bank, that found critical weaknesses in these servicers' mortgage servicing and foreclosure processes that resulted in unsafe and unsound practices. OneWest Bank and the Office of Thrift Supervision entered into the order on April 13, 2011, relating to the bank's mortgage servicing and foreclosure activities. In connection with OneWest Bank's conversion into a national bank, the order's terms were fully incorporated into a Consent Order issued by the OCC against OneWest Bank on March 11, 2014.

Between April 2011 and April 2012, the OCC and the Board issued enforcement actions against 15 mortgage loan servicers in addition to OneWest Bank for deficient practices in mortgage loan servicing and foreclosure processing. In addition to mandating the correction of servicing practices, the actions required the servicers to hire independent consultants to conduct file reviews to determine if borrowers suffered financial injury and were eligible for financial remediation.

⁵⁶ Some commenters expressed concerns that the combined bank would seek to serve LMI neighborhoods using technology and mobile banking rather than through branches

particular, the plan must, among other things, provide details concerning the actions the bank will take to ensure that on a prospective basis the bank is helping to meet the credit needs of its assessment area, including details regarding affordable multifamily housing lending, small business lending in LMI geographies, and investments targeted towards LMI geographies and individuals. The revised plan also must contain measurable annual goals and timetables for the achievement of those goals. In addition, the bank must provide reports to the OCC indicating the results of the bank's efforts to implement the plan.⁵⁷

Branching

Some commenters criticized OneWest Bank's distribution of branches in low-income census tracts, alleging that two of OneWest Bank's 73 branches were in such census tracts. As noted in the OneWest Bank Evaluation, OCC examiners found that 11 middle- and upper-income branches in the bank's assessment areas have at least 33 percent or more LMI family population, and that OneWest Bank serves a larger portion of the LMI population due to the large percentage of LMI families residing in the various census tracts.

and ATMs. In addition, a number of commenters requested that the combined bank introduce more products targeted to LMI customers. The revised plan is required to describe how the combined bank's alternative systems for delivering retail banking services will effectively provide needed retail banking services in LMI geographies or to LMI individuals. In addition, as noted above, although the Board has recognized that banks can help to serve the banking needs of communities by making certain products or services available, the CRA does not require an institution to provide any specific products or services.

⁵⁷ The OCC is also requiring the combined bank to submit a comprehensive business plan for the agency's prior written determination of no supervisory objection. The business plan must, among other things, address the lending activities in which the bank plans to engage (along with the relevant credit policies and procedures to address all aspects of credit underwriting, credit administration, and loan portfolio management) and provide a plan to meet identified goals and objectives (along with target dates and an identification of processes, personnel, and control systems).

Some commenters alleged that OneWest Bank has a disproportionately low number of branches in minority neighborhoods. OneWest Bank's branch network was inherited from IndyMac and two other failed depository institutions. OneWest Bank's policy on branching recognizes the potential impact of any branch openings, closures, consolidations, and relocations on minority residents.

Several commenters expressed concerns about OneWest Bank's record of branch closings, alleging that OneWest Bank's branch closings in the last five years have had a disproportionately negative effect on LMI and minority neighborhoods. In the OneWest Bank Evaluation, OCC examiners noted that the bank's closing and opening of branches in the assessment areas receiving full-scope reviews did not adversely affect the accessibility of branches, particularly in LMI geographies. During the evaluation period, OneWest Bank consolidated three branches and relocated one branch, all within upper-income census tracts. Moreover, the Board has considered the fact that federal banking law provides a specific mechanism for addressing branch closings, including the provision of notice to the public and the appropriate federal supervisory agency before the branch is closed.⁵⁸

A commenter criticized CIT Group for not committing to open new branches in underserved neighborhoods, and a number of commenters expressed concerns that planned branch consolidations by the combined bank would have a negative effect on LMI neighborhoods. OneWest Bank expects to complete four branch relocations in 2015. One branch was relocated from an upper-income census tract to a middle-income census tract, two branches will be relocated from middle-income census tracts to moderate-income census tracts, and one branch will move to a new location

⁵⁸ See 12 U.S.C. § 1831r-1, as implemented by the Joint Policy Statement Regarding Branch Closings, 64 Federal Register 34844 (June 29, 1999). The Joint Policy Statement requires that a bank provide the public with at least 30 days' notice and the appropriate federal supervisory agency with at least 90 days' notice before the date of the proposed branch closing. The bank also is required to provide reasons and other supporting data for the closure, consistent with the institution's written policy for branch closings.

within its low-income census tract. The federal banking supervisory agencies evaluate a bank's record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals, as part of the CRA examination process.⁵⁹

D. Fair Lending Compliance

The Board has considered the records of CIT Bank and OneWest Bank in complying with fair lending and other consumer protection laws.⁶⁰ As part of its evaluation, the Board reviewed CIT Bank's and OneWest Bank's records of performance under fair lending laws, the comments received on the proposal, CIT Group's responses, and other supervisory information.

Fair Lending Allegations and Response

As noted, commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles, California, area, based on 2012 HMDA data. A commenter alleged that in 2012 and 2013, OneWest Bank made a disproportionately low dollar amount of its SBA loans in California to African American-owned businesses. It was also alleged that in 2012, OneWest Bank did not originate any single family mortgage purchase loans or home improvement loans to African American borrowers in the Los Angeles area.

⁵⁹ See, e.g., 12 CFR 228.24(d)(2). In addition, the Board notes that the OCC, as the primary federal supervisor of the combined bank, will continue to review the bank's branch closing record in the course of conducting CRA performance evaluations.

⁶⁰ A number of commenters alleged that OneWest Bank accelerated foreclosure proceedings or otherwise retaliated against commenters who opposed the proposal. OneWest Bank has represented that it has not retaliated against any commenters and has not changed its processes for servicing mortgage loans. Regarding each alleged case of retaliation, the bank has provide the OCC with confidential information to show that there were legitimate reasons for its actions. The OCC has reviewed and assessed the adequacy of the bank's responses and did not conclude that these allegations justified denial of the bank merger involved in this proposal.

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.⁶¹ Consequently, HMDA data disparities must be evaluated in the context of other information regarding the lending record of an institution.

In response to these concerns, OneWest Bank argued that OneWest Bank, particularly in 2012, engaged in limited new loan originations. In particular, the bank made only 81 single-family mortgage purchase originations nationwide in 2012. OneWest Bank also contended that 2013 HMDA data on single-family mortgage loan refinancing in the Los Angeles assessment area demonstrate that, in that period, the bank had an 87.3-percent approval rate for African-American applicants, which exceeded its approval rate for white applicants.⁶² In 2013, 78 percent of OneWest Bank's small business loans were made in majority-minority census tracts. In addition, Asian-owned banks and other lenders attract a significant portion of the applications from Asian borrowers in California and, as a result, the lending patterns to Asian borrowers in California may reflect a competitive mortgage lending market rather than discriminatory lending practices.⁶³

⁶¹ 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.

⁶² As noted in the OneWest Bank Evaluation, OneWest Bank held a 4.72-percent market share by total dollars of deposits in the Los Angeles AA but only held a 0.23 percent market share of HMDA loans. Examiners found this disparity to be reasonably explained on two bases. First, the Los Angeles AA saw high competition in mortgage lending, as several major banks were the dominant home mortgage lenders in the area. Second, the bank's business focus was on improving the performance of existing loans through modification programs, such as HAMP, rather than on loan origination.

⁶³ See Umpqua Holdings Corporation, FRB Order No. 2014-2 at 23 n.46 (April 1, 2014).

CIT Group's and OneWest Bank's Fair Lending Program

CIT Group and OneWest Bank have both instituted policies and procedures to help ensure compliance with all fair lending and other consumer protection laws and regulations. CIT Group has stated that, on consummation, CIT Group's existing risk-management framework would be implemented at the combined organization and OneWest Bank's existing fair lending program would be implemented at the combined bank, supplemented appropriately to reflect the organizations' new business profile.

OneWest Bank provides fair lending training and education for all employees. The training includes programs on the bank's policies and procedures as well as applicable fair lending laws.

The two organizations' legal and compliance risk-management programs include a fair lending risk assessment that is updated annually or more frequently, based on material changes to the bank's strategy, operations, products, or services. OneWest Bank's assessment includes an evaluation of the risk of OneWest Bank's lending activities, along with an assessment of the quality of the controls and the resulting residual risk. Through the risk assessment, OneWest Bank identifies areas of higher fair lending risk and conducts targeted compliance reviews of these areas.

OneWest Bank's Fair and Responsible Lending Department conducts an annual comparative file review. In this review, the Department evaluates loan files for mortgage applicants in protected classes against loan files for similarly situated applicants who are not in a protected class to detect possible disparate treatment with respect to credit decisions and pricing. CIT Group represents that OneWest Bank's comparative file reviews have not identified concerns related to discrimination against applicants in protected classes.

OneWest Bank maintains a secondary review process for all denied mortgage loan applications to ensure that all qualified applicants are approved. This second review is conducted to ensure that the bank's fair lending standards are applied fairly and uniformly to all applicants, that all possible avenues of approval have been

explored prior to formal denial, and that the applicant was not denied based on any prohibited basis.

E. Mortgage Loan Servicing, Modification, and Foreclosure Practices

As noted, a large number of commenters expressed concerns about OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities, with some making assertions about individual wrongful treatment and suggesting an overall practice of wrongful conduct such as failure to maintain foreclosed property in minority neighborhoods.⁶⁴ The issues raised by the commenters relating to OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities are of concern to the Board. In evaluating the issues raised by the commenters, the views of the bank's primary regulators are particularly important considerations to the Board because of the primary regulator's proximity to, and access to information regarding, the institution.

The Board has consulted OneWest Bank's primary federal banking regulator, the OCC. Issues raised by the commenters relating to OneWest Bank's mortgage servicing, loan modification, and foreclosure processing activities were addressed as part of a review of the bank's compliance with a Consent Order issued by the OCC against OneWest Bank relating to mortgage servicing and foreclosure practices. Specifically, the OCC reviewed the mortgage servicing and the initiation and handling of foreclosure proceedings by OneWest Bank as part of the agency's assessment of the bank's compliance with the Consent Order, including the bank's implementation of appropriate policies and procedures. Under the Consent Order, OneWest Bank was required, among other things, to have an independent consultant review and identify borrowers financially harmed by the bank's deficient practices in mortgage servicing and foreclosure processing, and to provide remediation to harmed borrowers.

⁶⁴ In particular, some commenters alleged that OneWest Bank's foreclosure practices disproportionately affected minority individuals, senior citizens, and women.

To accomplish this, OneWest Bank was required to retain an independent consultant to conduct comprehensive reviews of the bank's foreclosure activity to identify whether borrowers whose mortgages were serviced by the bank and whose homes were in the foreclosure process during 2009 or 2010 ("in-scope borrowers") suffered financial injury because of servicer errors, omissions, or other deficiencies.⁶⁵ The review for OneWest Bank encompassed an in-scope population of more than 192,000 borrower loan files.⁶⁶ Once the reviews of borrowers' foreclosure actions had been completed, the independent consultant determined the number of injured borrowers who were eligible for compensation, and OneWest Bank made payments to injured borrowers.⁶⁷ As of June 30, 2015, OneWest Bank borrowers have received payments totaling approximately \$12.25 million, which represent approximately 96 percent of the bank's total expected remediation of approximately \$12.8 million.

⁶⁵ Under the Independent Foreclosure Review, before proceeding with the file reviews, the banking organizations submitted proposals outlining the independent consultants they wished to engage, which were subject to nonobjection determinations by the regulators. The independent consultants' engagement letters were subject to extensive review and revision prior to acceptance by the agencies. The servicers, including OneWest Bank, also were required to contact all in-scope borrowers and provide them with the opportunity to request a review of their foreclosure action by an independent consultant to determine whether the borrower suffered financial injury because of errors by their servicer and potentially receive remediation.

⁶⁶ The in-scope population included residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by OneWest Bank that had been pending at any time from January 1, 2009, to December 31, 2010, as well as residential foreclosure sales that occurred during this time period.

⁶⁷ The appropriate amount of compensation to be provided to borrowers was based on financial remediation guidance issued by the regulators for general categories of harm and was not intended to replace the type of specific finding of actual harm or losses that might be determined by a court. See Press Release, Board of Governors of the Federal Reserve System, Agencies Release Financial Remediation Guidance, Extend Deadline for Requesting a Free Independent Foreclosure Review to September 30, 2012, (June 21, 2012), available at <http://www.federalreserve.gov/newsevents/press/bcreg/20120621a.htm>.

In addition, to address shortcomings with its mortgage servicing and foreclosure processing activities, OneWest Bank was required, among other things, to implement (i) acceptable action plans to ensure effective mortgage servicing, foreclosure, and loss mitigation activities; (ii) a satisfactory compliance program to ensure that mortgage servicing and foreclosure operations comply with all applicable legal requirements; (iii) third-party vendor quality control policies and procedures to ensure adequate oversight of any third-party service providers that perform foreclosure or related functions;⁶⁸ and (iv) a plan to ensure the timely delivery of accurate information to borrowers in foreclosure, loss mitigation, and loan modification activities.

The OCC has conducted targeted examinations of OneWest Bank's efforts to satisfy the terms of the Consent Order, including efforts to develop a compliance program for the bank's servicing and foreclosure operations and to implement effective policy and procedural changes to achieve compliance with the provisions of the Consent Order; commitment of resources to address and correct identified servicing deficiencies; and completion of the Independent Foreclosure Review. Based on these examinations and other supervisory information, the OCC determined that OneWest Bank had satisfied all of the requirements related to its mortgage servicing and foreclosure processing activities and had a program and associated policies and procedures that are satisfactory from a supervisory perspective. Consequently, the OCC lifted the Consent Order⁶⁹

⁶⁸ As part of the compliance plan, OneWest Bank was required to implement acceptable policies and procedures for outsourcing foreclosure or related functions such as property management of real estate acquired through or in lieu of foreclosure, to ensure that the bank's mortgage servicing and foreclosure activities are conducted in a safe and sound manner.

⁶⁹ IMB Holdco is subject to a Consent Order overseen by the Board that requires enhanced oversight of mortgage servicing and foreclosure processing. The Board is monitoring the sustainability of the remediation implemented by IMB Holdco to comply with the Consent Order. CIT Group, as IMB Holdco's successor, would become subject to the Consent Order upon consummation of the proposed transaction and has stated that it would comply with the requirements of the Consent Order.

effective July 14, 2015.⁷⁰ In addition, the OCC has approved the merger of OneWest Bank and CIT Bank on July 21, 2015.

F. Additional Information on Convenience and Needs to be Served by the Combined Organization

In assessing the effects of a proposal on the convenience and needs of the communities to be served, the Board also considers the extent to which the proposal would result in public benefits.⁷¹ CIT Group represents that the proposal would provide

⁷⁰ A number of commenters urged CIT Group to commit to the Board to improve its mortgage servicing and foreclosure practices.

Commenters also noted several other judicial proceedings to which OneWest Bank is a party that allege wrongful conduct by OneWest Bank relating to mortgage foreclosure and servicing, including dual tracking. In addition, some commenters noted a lawsuit filed against OneWest Bank under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, United States ex rel. Fisher v. OneWest Bank, FSB, No. 1:12-cv-09352-CM (S.D.N.Y. 2015), alleging that OneWest Bank made false certifications regarding consumer disclosures in connection with the HAMP loan modification program. The case was voluntarily dismissed without prejudice by the relator.

⁷¹ As noted above, a number of commenters alleged that the proposal would not provide a clear or significant public benefit. Many of these commenters suggested that the involved institutions' receipt of public assistance—i.e., loss-share agreements with the FDIC in the case of OneWest Bank and a default by CIT Group on funds received under the Troubled Asset Relief Program Capital Purchase Program ("TARP CPP")—indicate that the proposal should result a higher that usual showing of public benefits. In addition, a number of commenters criticized CIT Group's plans to use OneWest Bank's tax attributes to reduce CIT Group's taxable income. Commenters also alleged that the transfer of OneWest Bank's loss-share agreements from IMB Holdco to CIT Group serves no public purpose.

The FDIC's administration of its authorities as receiver of failed depository institutions, including its decisions to enter into loss-share agreements with purchasing institutions and any transfer of these agreements in subsequent merger transactions, is a subject solely within the purview of the FDIC. Similarly, the decision to provide assistance to a banking organization through the TARP CPP, the permissible use of tax attributes to reduce taxable income, and a Bankruptcy Court's decision to confirm a plan of reorganization that eliminates the obligation to repay the TARP CPP assistance, are solely within the purview of the Department of the Treasury and the relevant Bankruptcy Court, respectively. The Board believes that these matters are not within the Board's

customers of the combined organization access to an expanded suite of products and services that are not currently available from either organization on a standalone basis. For example, CIT Group represents that IMB Holdco's existing customers would have access to CIT Group's wider suite of business financing products, such as small-ticket leasing, commercial lending, and factoring products. In addition, CIT Group represents that CIT Group's existing customers would have access to OneWest Bank's deposit and cash management services, and CIT Group's smaller business customers would have access to additional products and services from OneWest Bank's lending platform. Further, CIT Group stated that the combined organization would be strengthened by the complementary aspects of the two entities' businesses—namely, CIT Group's nationwide small and middle-market commercial lending and leasing platform and OneWest Bank's regional commercial and consumer branch banking platform—resulting in a stronger and more stable franchise.

G. Conclusion on Convenience and Needs Considerations

The Board recognizes that this proposal represents a sizeable expansion by CIT Group. Accordingly, an important component of the Board's review of the proposal has been its consideration of the effects of the proposal on the convenience and needs of all communities served by CIT Group, IMB Holdco, and OneWest Bank.

In conducting its review, the Board has weighed the concerns expressed by the commenters in light of all the facts of record, including the overall CRA records of CIT Bank and OneWest Bank, and the Board's consultations with OneWest Bank's supervisors, the OCC and CFPB. A significant number of commenters have expressed support for the proposal based on the records of CIT Bank and OneWest Bank in helping to serve the banking needs of their entire communities, including LMI areas. Other commenters have expressed concerns about specific aspects of CIT Bank's and OneWest Bank's records of performance under the CRA in their current service areas and have

limited jurisdiction to adjudicate and do not relate to factors that the Board may consider when reviewing an application under the BHC Act. See Western Bancshares.

expressed reservations about whether the combined organization would be responsive to the banking and credit needs of all of its communities, especially in southern California. Commenters also have expressed concerns about OneWest Bank's compliance with the law and its treatment of borrowers in its mortgage servicing and foreclosure activities. The Board has considered these concerns and weighed them against the overall CRA records of CIT Bank and OneWest Bank; the institutions' records of compliance with fair lending and other consumer protection laws; consultations with the CFPB and OCC; confidential supervisory information; information provided by CIT Group, including its responses to comments; and the public comments on the proposal.

Based on that review, the Board believes that the proposed acquisition of OneWest Bank by CIT Group would result in public benefits and that the convenience and needs factor is consistent with approval. The Board expects the CIT Group to engage in activities that help to meet the credit needs of the communities CIT Group serves at a level commensurate with the expanded size and scope of the combined organization, consistent with safe and sound lending practices. The Board also expects CIT Group to support the combined bank in developing a comprehensive business plan and providing a more detailed CRA plan required by the OCC in connection with its approval of the merger between OneWest Bank and CIT Bank. The Board, along with other federal supervisors, will monitor these developments through the examination process.

Financial Stability

The Dodd-Frank Act amended section 3 of the BHC Act to require the Board to consider "the extent to which a proposed acquisition, merger, or consolidation would result in greater or more concentrated risk to the stability of the United States banking or financial system."⁷²

As discussed above, a number of commenters expressed concerns regarding the effect of the proposal on financial stability. These commenters generally asserted that

⁷² Section 604(d) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376, 1601, codified at 12 U.S.C. § 1842(c)(7).

the proposal would result in a too-big-to-fail institution given that the combined organization would have more than \$50 billion in assets. Commenters also alleged that CIT Group is materially interconnected with the economy and with other companies that are important to the stability of the financial system.⁷³

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.⁷⁴ 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.⁷⁵

In this case, the Board has considered information relevant to risks to the stability of the U.S. banking or financial system. Both the acquirer and the target are predominately engaged in retail commercial banking activities.⁷⁶ The combined

⁷³ Commenters also raised concerns about the amount of assets without observable market prices at the combined organization.

⁷⁴ Many of the metrics considered by the Board measure an institution’s activities relative to the U.S. financial system (“USFS”).

⁷⁵ For further discussion of the financial stability standard, see Capital One Financial Corporation, FRB Order No. 2012-2 (February 14, 2012).

⁷⁶ As noted, CIT Group is primarily a commercial lender, and OneWest Bank is primarily a retail bank engaged in residential mortgage activities.

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.⁷⁷ In addition, the organization would not be a critical services provider or so interconnected with other firms or the markets that it would pose 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.

Request for Additional Public Meetings

Several commenters requested that the Board hold public meetings on the proposal in cities other than Los Angeles. Section 3(b) of the BHC Act does not require that the Board hold a public hearing on an application unless the appropriate supervisory authorities for the bank to be acquired make a timely written recommendation of denial of the application.⁷⁸ The Board has not received such a recommendation from the appropriate supervisory authorities. Under its rules, the Board also may, in its discretion, hold a public hearing if appropriate to allow interested persons an opportunity to provide relevant testimony when written comments would not adequately represent their views. The Board has considered the requests in light of all the facts of record. In the Board's view, the commenters have had ample opportunity to provide testimony and submit

⁷⁷ CIT Group does not currently engage, and as a result of this transaction would not engage, in business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the combined entity. In addition, the combined entity's shares of USFS intrafinancial system assets and liabilities are each less than 1 percent. Moreover, the Board has considered the amount of assets at the combined organization that would not have observable market prices and believes that these asset levels would not meaningfully contribute to the complexity of the USFS or make the combined organization materially vulnerable to financial market distress.

⁷⁸ 12 U.S.C. § 1842(b); 12 CFR 225.16(e).

comments on the proposal. As noted above, the Board and the OCC held a public meeting on the application, at which 111 persons gave testimony. Persons who could not attend in person were permitted to have their written comments presented by other participants at the meeting. Commenters submitted numerous written comments that the Board has considered in acting on the proposal. The requests do not identify disputed issues of fact material to the Board's decision that would be clarified by a further public meeting. In addition, the requests do not demonstrate why written comments do not present the commenters' views adequately or why a further meeting otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that public meetings in cities other than Los Angeles are not required or warranted in this case. Accordingly, the requests for further public meetings on the proposal are denied.

In addition, several commenters requested a further extension of the comment period for the proposal. The Board's Rules of Procedure contemplate that the public comment period will not be extended absent a clear demonstration of hardship or other meritorious reason for seeking additional time.⁷⁹ The commenters' requests for additional time do not identify circumstances that would warrant an extension of the public comment period for this proposal. Accordingly, the Board has determined not to extend further the public comment period.⁸⁰

⁷⁹ 12 CFR 262.25(b)(2).

⁸⁰ A number of commenters requested that the Board delay action on the proposal until (i) CIT Group commits to a community reinvestment plan negotiated with community groups, (ii) the FDIC makes public the results of its audit of OneWest Bank's compliance with the bank's loss-share agreements, (iii) certain commenters receive responses from federal and state agencies under applicable freedom of information laws, (iv) OneWest Bank halts foreclosing upon the property of certain reverse mortgage loan borrowers, or (v) the Board and the OCC verify that OneWest Bank offered loan modifications to all qualified borrowers before foreclosing on the borrower's property and collecting loss-share payments from the FDIC.

The Board believes that the record in this case does not warrant postponement of its consideration of the proposal. During the application process, the Board has accumulated

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 CIT Group with all of 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

a significant record, including reports of examination, supervisory information, public reports and information, and significant public comment. The Board believes this record is sufficient to allow it to assess the factors it is required to consider under the BHC Act. The BHC Act and the Board's rules establish time periods for consideration and action on proposals such as the current proposal. Moreover, as discussed more fully above, the CRA requires the Board to consider the existing record of performance of an organization and does not require that the organization enter into contracts or agreements with others to implement its CRA programs. For the reasons discussed above, the Board believes that commenters have had ample opportunity to submit their views and, in fact, they have provided ample written submissions and oral testimony that have been considered by the Board in acting on the proposal. Based on a review of all the facts of record, the Board concludes that delaying consideration of the proposal, granting another extension of the comment period, or denying the proposal on the grounds discussed above, including for informational insufficiency, is unwarranted.

The Board received multiple comments alleging that the Board's consideration of the proposal is precluded by the existence of a lawsuit filed against OneWest Bank under the False Claims Act. United States ex rel. Beekman v. IndyMac Federal Bank, F.S.B., No. 9:12-cv-81138-JIC (S.D. Fla. 2015). This case has been dismissed with prejudice for failure to meet the applicable pleading standard.

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,⁸¹ effective July 19, 2015.



Robert deV. Frierson
Secretary of the Board

⁸¹ Voting for this action: Chair Yellen, Vice Chairman Fischer, and Governors Tarullo, Powell, and Brainard.