



**CRA Decision #186
December 2017**

October 16, 2017

Mr. Jason J. Cabral, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004-2498

Re: Application to merge Capital Bank Corporation, Raleigh, North Carolina, with and into First Tennessee Bank National Association, Memphis, Tennessee
OCC Control Number: 2017-SO-Combination-298316 OCC Charter No.: 336

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Dear Mr. Cabral:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application to merge Capital Bank Corporation, Raleigh, North Carolina (Capital Bank) into First Tennessee Bank National Association, Memphis, Tennessee (First Tennessee). First Tennessee is also authorized to retain its own main office as the main office of the resulting bank, and to retain and operate as branches its existing branches and the main office and branches of Capital Bank. The OCC also approves retention of Capital Bank's 17 subsidiaries and one non-controlling investment, North Carolina Title Center, LLC, that engage in bank permissible activities. The OCC also conditionally approves retention of First Tennessee's interest in Ridgeway Tennessee, LP. A list of the proposed subsidiaries and investments and their related activities is attached. This decision is subject to the conditions contained herein.

This decision is granted after a thorough review of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by the banks' representatives during the application process.

The Community Affairs Division will review the First Tennessee's investments in VCS Management, LLC and Capital Bank Financial Foundation to determine whether these investments satisfy the requirements of 12 USC 24 (Eleventh) and 12 CFR Part 24 concerning national bank community and economic development entities, community development projects, and other public welfare investments. Community Affairs will respond to First Tennessee after its review. Please contact Barry Wides, Deputy Comptroller, Community Affairs, at (202) 649-6420 if you have questions regarding the status of the public welfare retention request.

I. Background and the Transaction

First Tennessee is a national bank with its main office in Memphis, Tennessee with 170 branches located in the states of Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia. It is a direct subsidiary of First Horizon National Corporation (First Horizon BHC), a bank holding company headquartered in Memphis, Tennessee.

Capital Bank is a state-chartered commercial bank with its main office in Raleigh, North Carolina, with 201 locations (including its main office) located in the states of Florida, North Carolina, South Carolina, Tennessee, and Virginia. It is a wholly owned subsidiary of Capital Bank Financial Corporation (Capital BHC), a bank holding company headquartered in Raleigh, North Carolina.

First Horizon BHC has submitted an application to the Federal Reserve Bank of St. Louis to acquire Capital BHC through a merger transaction. First Horizon BHC formed a subsidiary, Firestone Sub, Inc. to facilitate the acquisition of Capital BHC. Firestone Sub, Inc. will merge with and into Capital BHC with Capital BHC resulting. Capital BHC will then merge into First Horizon BHC with First Horizon BHC resulting. At this point, First Tennessee and Capital Bank will be affiliated. Immediately after the consummation of the bank holding company merger, Capital Bank will merge with and into First Tennessee in an affiliated intrastate merger transaction filed with the OCC.

II. Legal Authority for the Transaction

First Tennessee applied to the OCC for approval to merge Capital Bank with and into First Tennessee under 12 USC 215a and the Bank Merger Act (BMA), 12 USC 1828(c). Section 215a authorizes a state bank to merge into a national bank “located within the same State.” In prior decisions, the OCC has concluded that a national bank with its main office and branches in more than one state is “located” in each such state for purposes of section 215a.¹ First Tennessee has its main office and branches in Tennessee, and branches in each of the other states where Capital Bank operates (Florida, North Carolina, South Carolina, and Virginia). Therefore, the banks are “located within the same State” for purposes of this section, and the merger is authorized under 12 USC 215a.²

First Tennessee also applied for approval to retain the offices of the merging banks as branches. The resulting national bank’s retention of branches in a merger under 12 USC 215a is governed by 12 USC 36(b)(2). Under 12 USC 36(b)(2)(A), a national bank resulting from a merger with another bank may retain and operate as a branch any office which immediately prior to the merger was in operation as a main office or branch office of the target bank, if it may be established as a new branch of the resulting bank under 12 USC 36(c) and the OCC approves its continued operation. 12 USC 36(c) authorizes a national bank to establish and operate new branches within the state in which the bank is “situated,” to the extent that state law specifically authorizes such establishment and operation by state-chartered banks at that time and subject to any state law restrictions concerning location imposed on state-chartered banks. For purposes of 12 USC 36(c), a national bank is “situated” in any state in which it has its main office or a

¹ See, e.g., Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (Part II-A-1) (pages 6-8).

² Additionally, First Tennessee could have sought approval to merge Capital Bank with and into First Tennessee under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, which authorizes mergers between insured banks with different home states. See 12 USC 215a-1, 1831u. The home state of First Tennessee is Tennessee, and the home state of Capital Bank is North Carolina. See 12 USC 1831u(g)(4). The Riegle-Neal Act also has an express provision permitting the resulting national bank to retain the branches of all participating banks. See 12 USC 36(d) & 1831u(d)(1).

branch.³ Therefore, First Tennessee is “situated” in Florida, North Carolina, South Carolina, Tennessee, and Virginia, and the laws of each of these states would permit a state bank to establish branches at the main office and branch locations of Capital Bank. First Tennessee may retain and operate, as branches, Capital Bank’s main office and branch locations.⁴

Under 12 USC 36(b)(2)(C), a national bank resulting from a merger with another bank may retain and operate any branch of the national bank that existed prior to the merger, if the OCC approves its continued operation, unless a state bank resulting from a merger would be prohibited by state law from retaining as a branch an identically situated office of the state bank. At the time the merger application was filed, First Tennessee had branches in Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. There is no provision in any of these states’ laws that would prohibit a state-chartered bank, following a merger with another bank, from retaining its own similarly situated branches in the state. Therefore, First Tennessee may retain and operate its existing branches after the bank merger.

As noted, earlier, First Tennessee will acquire Capital Bank’s 17 subsidiaries as well as equity investments in two other entities. In the case of one of the entities, Ridgeway Tennessee, LP (Ridgeway), First Tennessee has not demonstrated that it is a permissible equity investment for a national bank. Therefore, First Tennessee is required to divest its interest in Ridgeway or bring its activities into conformance with applicable national banking law within two years of consummation of the merger.

III. Bank Merger Act Considerations

The OCC also reviewed the proposed merger under the criteria of the BMA, 12 USC 1828(c), and applicable OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system.⁵ As discussed in more detail below, the OCC has found that approval of the application is consistent with these factors, subject to the conditions set forth in Section VII below.

³ See, e.g., *Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974)

⁴ Prior to consummation of the merger, Capital Bank will close 15 branches in the normal course of business. In addition, there are some markets where Capital Bank and First Tennessee have branches that are located within one to two miles of each other. First Tennessee will close or consolidate 27 of these closely located branches upon consummation of the merger. First Tennessee will continue to meet the convenience and needs of the community through the products, services and branch network of the resulting bank.

⁵ In addition, under the BMA, the OCC may not approve any interstate merger that results in the resulting insured national bank controlling more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Under section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 USC 1852, as implemented by Regulation XX, 12 CFR 251, an insured national bank generally may not merge with or acquire all or substantially all of the assets of another company, if the total consolidated liabilities of the acquiring institution upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the preceding calendar year. The OCC has examined the proposed transaction in light of these provisions and determined that the proposed transaction is permissible.

A. Financial and Managerial Resources

First Tennessee has demonstrated that it has the financial strength and management ability to satisfactorily absorb the target bank. The overall condition of the merging banks, and other relevant supervisory facts, supports approval of the proposed bank merger. Both banks have capital ratios well above those necessary to be considered well capitalized. Each bank has satisfactory earnings, asset quality, capital and liquidity. Future prospects for the resulting bank are positive. First Tennessee will be well capitalized at consummation, with capital ratios well above the minimum to be considered well capitalized. Financial projections appear reasonable and indicate that the resulting bank will have satisfactory capital ratios and earnings prospects. The resulting bank will have adequate resources to absorb the costs of the merger, complete integration of the banks' operations, and maintain satisfactory reserves. The resulting bank will have a strong management team with extensive experience in banking and a record of performance sufficient to lead the resulting bank.

B. Competitive Analysis

There are 52 relevant geographic markets for this transaction. In 41 of these geographic markets First Tennessee and Capital Bank do not both currently have retail banking offices and so are not direct competitors. In 11 of these markets First Tennessee and Capital Bank compete directly. OCC has evaluated each of these eleven markets using the Herfindahl-Hirschman Index (HHI) test.⁶ In eight of these markets, the proposed transaction would not result in concentration levels above the HHI threshold. Thus, the structural analysis indicates that the transaction will not significantly reduce competition in these markets. Competition from credit unions and other financial institutions mitigate competitive concerns for two of the remaining three markets.⁷

In the Greene County, Tennessee market, the transaction as proposed would exceed the HHI thresholds. Based on the potential for competition to be reduced in the Greene County market, First Horizon BHC and Capital BHC executed a Letter of Agreement with the Department of Justice on October 6, 2017, to divest two branches and associated deposits and customer relationships in this market.⁸ In this case, the proposed divestiture, appears to be sufficient to outweigh any adverse effect on competition in the Greene County market. In addition, at the time of the merger the banks will be affiliated. Based on the above, the OCC concludes that the BMA transaction will not have a significant anti-competitive effect on the Greene County market or any other geographic market.

C. Effectiveness in Combating Money Laundering

The OCC must also consider the effectiveness of any insured depository institution involved in a merger transaction in combating money laundering activities. First Tennessee and Capital Bank maintain satisfactory Bank Secrecy Act and anti-money laundering controls. Both banks have established acceptable compliance and monitoring programs. The OCC finds that the records of First Tennessee and Capital Bank in combating money laundering activities are consistent with approval.

⁶ See *Comptroller's Licensing Manual*, "Business Combinations Booklet."

⁷ Lawrence County, Tennessee and Morristown area, Tennessee.

⁸ The Department of Justice has indicated it believes the BMA Transaction will not have a significantly adverse effect on competition if the commitments outlined in the Letter of Agreement are fulfilled.

D. Risk to the United States Banking or Financial System

12 USC 1828(c)(5) requires the OCC to consider, when reviewing transactions under the BMA, the risk to the stability of the United States banking or financial system (USFS). The OCC has looked to six criteria when applying this standard: (i) whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining firms; (ii) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining firms; (iii) whether the transaction would materially increase the extent of the interconnectedness of the financial system; (iv) whether the transaction would materially increase the extent to which the combining firms contribute to the complexity of the financial system; (v) whether the transaction would materially increase the extent of cross-border activities of the combining firms; and (vi) the relative degree of difficulty of resolving the combined firm. Applying these standards, the OCC concludes that the proposed merger does not pose a risk to the stability of the USFS. Key considerations leading to this conclusion are:

(i) Size – The resulting bank will have approximately \$40 billion in total assets and be the 43rd largest United States bank by asset size. The resulting bank will have total deposits of \$31 billion (less than one percent of nationwide deposits), far below the nationwide limit of 10 percent. The resulting bank will be the 42nd largest US bank by deposit size. (ii) Substitute Providers – Both firms maintain straightforward and traditional business models. Neither First Tennessee nor Capital Bank engages in any activities that are critical to the functioning of the US financial system. There are many competitors in the markets served by First Tennessee and Capital Bank offering similar products and services. (iii) Interconnectedness – Neither First Tennessee nor Capital Bank engages, nor will the resulting bank engage, in any 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 resulting bank. The resulting bank will have limited interconnectedness. (iv) Complexity – The proposed transaction will not contribute to the overall complexity of the US financial system. The proposed transaction does not involve complex assets or liabilities. Both banks offer lending and deposit products to consumers and businesses. The resulting bank will have a low level of complexity that will not hinder its timely and efficient resolution in the event it were to experience financial distress. (v) Cross Border Activities – Neither First Tennessee nor Capital Bank has locations or material operations, activities, assets or liabilities outside of the United States. The banks engage in only a *de minimis* amount of cross border activities. The resulting bank does not expect to increase its limited cross-border activities as a result of the merger. (vi) Resolution – Although the merger will result in a larger, more diverse bank, the relative simplicity of the combined banks' activities and operations indicates that, based on the above considerations, resolving the resulting institution would not be so difficult or costly that it would increase the risk to the US financial system.

The OCC has reviewed the transaction under the OCC's financial stability review framework, and has determined that the merger will not pose an undue risk to the stability of the United States Financial System.

IV. Community Reinvestment Act and Convenience and Needs of the Community

The Community Reinvestment Act (CRA) requires the OCC to take into account the record of the banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods (LMI), when evaluating applications under the BMA. 12 USC 2903(a)(2). The OCC considered the CRA performance evaluation (PE) of each bank

involved in this transaction, the licensing application and supporting materials, responses to public comments and additional information requests from the Board of Governors of the Federal Reserve System, as well as information in the supervisory records of each institution. A review of these records indicates that the banks' records of helping to meet the needs of their communities are consistent with approval of this application.

A. First Tennessee Bank National Association

First Tennessee's most recent CRA PE, prepared by the OCC and dated April 7, 2014, assigned the bank an overall "Satisfactory" rating.⁹ The major factors that supported the overall "Satisfactory" rating included: (i) the bank originated a significant majority of loans inside its assessment areas (AA); (ii) the bank had an adequate level of lending activity; (iii) the bank's distribution of loans was adequate; (iv) the bank's distribution of home mortgage loans by income level of the borrower was adequate; (v) the bank's community development (CD) lending supported affordable housing initiatives and activities that promoted economic development in AAs, including activities that revitalized or stabilized LMI census tracts; (vi) the bank had an overall good level of qualified investments that were highly responsive to community needs; (vii) the bank's branches were accessible to geographies and individuals of different income levels; and (viii) the bank provided an excellent level of CD services that were highly responsive to the CD needs in the bank's AAs.

Additionally, the OCC considered evidence of discriminatory or other illegal credit practices in rating the bank's CRA performance, and the bank's rating was not lowered as a result of this information. First Tennessee's CRA PE identified public information concerning violations of the Federal Trade Commission Act and the Servicemembers Civil Relief Act, as well as allegations in a complaint filed with the U.S. Department of Housing and Urban Development of potential violations of the Fair Housing Act that the bank settled. Examiners considered the nature, extent, and strength of the evidence of the practices, the extent to which the bank had policies and procedures in place to prevent the practices, and the extent to which the bank took or committed to take corrective action in deciding not to lower the bank's CRA rating from "Satisfactory."

B. Capital Bank Corporation

Capital Bank's most recent CRA PE, prepared by the Federal Deposit Insurance Corporation (FDIC) and dated February 22, 2016, assigned the bank an overall "Satisfactory" rating.¹⁰ The major factors that supported the overall "Satisfactory" rating included: (i) the bank's lending level reflected adequate responsiveness to AA credit needs; (ii) the high percentage of loans were made in the bank's AAs; (iii) the geographic distribution of the bank's loans reflected good penetration through the AAs; (iv) the distribution of loans reflected adequate penetration among

⁹ First Tennessee was evaluated as a large bank in a CRA PE dated April 7, 2014. The CRA PE evaluated Home Mortgage Disclosure Act (HMDA) reportable loans and small loans to businesses for the period that covered January 1, 2010 through December 31, 2013 and community development loans, qualified investments, and community development services for the period from January 11, 2010 through April 7, 2014. The CRA PE is available at: <https://www.occ.gov/static/cra/craeval/jun17/336.pdf>

¹⁰ Capital Bank was evaluated as a large bank in a CRA PE dated February 22, 2016. The CRA PE evaluated HMDA reportable loans and small loans to businesses for the period that covered January 1, 2011 through August 31, 2015 and community development loans, qualified investments, and community development services for the period from July 16, 2010 through February 22, 2016. The CRA PE is available at: https://www5.fdic.gov/CRAPES/2016/59049_160222.PDF

retail customers of different income levels and businesses of different sizes; (v) the bank exhibited an adequate record of serving the needs of the most economically disadvantaged areas of its AAs, low-income individuals, and/or very small businesses; (vi) the bank made a relatively high level of CD loans; (vii) the bank used flexible lending practices to serve its AAs; (viii) the bank had a significant level of qualified CD investments and grants; (ix) the bank exhibited good responsiveness to credit and community economic development needs; (x) the bank rarely used innovative and/or complex investments to support CD initiatives; (xi) the bank's delivery systems were reasonably accessible to essentially all portions of its AAs; (xii) the bank's opening and closing of branches throughout its AAs did not adversely affect accessibility of its delivery systems; and (xiii) the bank's services and business hours did not vary in a way that inconveniences customers in its AAs.

Additionally, the FDIC considered findings from its 2016 compliance examination of substantive violations of Regulation B, which implements the Equal Credit Opportunity Act; the bank's CRA rating of Satisfactory was not lowered as a result of these findings. The CRA PE noted that the violations were limited to one loan product, and the bank immediately implemented changes to its policies, procedures, training programs, internal assessments and other practices to prevent future discriminatory or illegal credit practices. The bank also agreed to make voluntary restitution.

V. Summary of Public Comments

Twenty-six commenters submitted public comments concerning the proposed transaction. Two of these comments expressed concerns regarding aspects of the banks' records of helping to meet the credit needs of their communities. The remaining twenty-four comments praised certain aspects of the banks' CRA records in helping to meet the credit needs of their communities. Below is a summary of the two comments that expressed concerns with regard to the proposed transaction.

One of the commenters voiced support for approving this transaction while also requesting that the OCC condition approval on the resulting institution's development of an enforceable CRA plan. In support of this request, the comment praised the bank for meeting with community groups to discuss local needs and opportunities to develop a community benefits plan.

The second commenter similarly requested that the OCC's approval be conditioned on development of a CRA Plan and additionally expressed concern regarding: (i) both institutions' CRA performance records; (ii) convenience and needs concerns about First Tennessee's current and prospective performance since its last CRA PE; and (iii) fair lending-related concerns about both institutions' lending to minority borrowers and lending in predominantly minority geographies.

With respect to concerns about both institutions' CRA performance records, the second commenter focused on both banks' records of lending to LMI borrowers and geographies. Specifically, this commenter raised concerns regarding First Tennessee's low satisfactory CRA rating for the state of North Carolina rating area, which consisted of the Raleigh and Winston-Salem Metropolitan Statistical Areas (MSA) as of the date of First Tennessee's last CRA PE. The commenter asserted that First Tennessee's level of lending to LMI borrowers and in LMI geographies in these MSAs was low, and the bank's level of CD lending in the Raleigh MSA was also low. The commenter also expressed concern that Capital Bank has an inconsistent record of lending to LMI borrowers and in LMI geographies. Specifically, the commenter noted that Capital Bank received Low Satisfactory ratings for the lending test in the Raleigh and

Asheville MSAs in its last CRA PE. The commenter also noted, however, that Capital Bank demonstrated a better share of lending to LMI borrowers and in LMI geographies at the conclusion of 2016.

Regarding First Tennessee's performance since its last CRA PE, the commenter focused predominantly upon the bank's progress in meeting its current CRA Plan.¹¹ The commenter expressed concern that the bank has failed to address twelve separate elements of the plan that focused on lending and marketing to LMI borrowers and in LMI geographies, lending to small businesses, CD activities, and products and services tailored to LMI borrowers and in LMI geographies. The commenter also made suggestions regarding specific products or services, including concerns about deposit product features such as the bank's debit sequencing, that the commenter would like the resulting institution to implement post-merger.

With respect to fair lending related concerns, the commenter focused on First Tennessee's record of lending to minority borrowers and borrowers situated in predominantly minority geographies. Citing 2016 HMDA data, the commenter asserted that the bank's originations to minority borrowers were low and its denial rates were high. The commenter also raised concerns regarding Capital Bank's originations to African American and Hispanic borrowers based on HMDA data.

VI. Analysis of Public Comments

The OCC has carefully considered the commenters' concerns as they relate to the statutory and regulatory factors considered by the OCC when reviewing an application under the BMA. In evaluating the proposed transaction, the OCC considers the banks' CRA records of performance and the probable effects of the proposed transaction on the convenience and needs of the community to be served. Though interrelated, as explained in the Public Notice and Comments booklet of the Comptroller's Licensing Manual (May 2017), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the merged entity will serve the needs of its communities on a prospective basis. In support of this analysis, the OCC has reviewed the banks' application materials, the banks' supervisory records, responses to information requests, and responses to the commenters' concerns.

A. CRA Performance

With regard to First Tennessee's recent CRA performance, the bank's CRA PE rated the bank an overall "Satisfactory," with ratings of "High Satisfactory" for the lending, investment, and service tests. Capital Bank also received a "Satisfactory" rating, with ratings of "High Satisfactory" for its lending and investment tests, and "Low Satisfactory" for the service test. As detailed above, one commenter raised general concerns regarding both banks' CRA ratings of "Low Satisfactory" for at least one of the CRA performance tests in specific geographic areas. The OCC and FDIC guidance accompanying the CRA regulations explains the circumstances under which a bank's performance will be rated "Low Satisfactory." Each agency's guidance

¹¹ In 2015, the OCC conditionally approved First Tennessee's application to merge with TrustAtlantic Bank pursuant to First Tennessee's development and publication of an enforceable CRA Plan. See Letter from Mr. Stephen A. Lybarger to Ms. Jackie Prester, Esq., CRA Decision No. 169 (Sept. 16, 2015), available at <https://www.occ.treas.gov/topics/licensing/interpretations-and-actions/2015/crad169.pdf>. In February 2016, First Tennessee published its CRA Plan on its website in accordance with the OCC's conditional approval. See <https://www.firsttennessee.com/-/media/files/first-tennessee-bank-cra-plan.pdf?la=en>.

provides that “[a] bank’s performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others.”¹² When considering a bank’s CRA performance in a particular AA, the OCC also considers the performance context, which includes consideration of the demographic data of the bank’s AA; information related to lending, investment, or service opportunities in the bank’s AA; the bank’s product offerings and business strategy; the institutional capacity and constraints of the bank; the economic climate; safety and soundness limitations; and any other factors that significantly affect the bank’s ability to provide lending, investments, and services in its AA. Moreover, OCC guidance also provides that exceptionally strong performance in some performance criteria may compensate for weaker performance in others.¹³

The commenter raised concerns about First Tennessee’s home mortgage lending in North Carolina. First Tennessee’s most recent CRA PE detailed that the bank had a limited branch presence in North Carolina isolated to two AAs—the Winston-Salem MSA and the Raleigh MSA. First Tennessee received an overall “Satisfactory” rating in North Carolina, with “Low Satisfactory” ratings for the lending and service tests, and a “High Satisfactory” rating for the investment test. The CRA PE also detailed that First Tennessee’s limited presence in the North Carolina market accounted for 1.12% of its total branch network, and consisted of just two branches and three ATMs during the performance evaluation period.¹⁴ Since the date of First Tennessee’s last CRA PE, the bank has added five more branches in North Carolina as the result of its fall 2015 merger with Trust Atlantic Bank.

First Tennessee’s CRA PE detailed a variety of CD activities that benefit LMI borrowers throughout the bank’s North Carolina AAs. In connection with First Tennessee’s “High Satisfactory” rating for the investment test, the CRA PE detailed the bank’s donations to community groups. Specifically, the CRA PE highlighted that the bank issued more than 50 donations and grants that totaled over \$150,000 and represented 7.35 percent of allocated tier 1 capital in the Winston-Salem MSA. The CRA PE detailed that these grants went toward non-profits that aid LMI communities through social services, financial planning and assistance, foreclosure prevention programs, and affordable housing. Additionally, First Tennessee made \$12.5 million in CD loans in the Winston-Salem MSA to assist with the redevelopment of distressed municipal areas and to finance the creation of a 69-bed homeless shelter.

Unlike First Tennessee, Capital Bank is headquartered in North Carolina, and had 49 branches within the state as of the last CRA evaluation period. Capital Bank’s CRA PE assigned an overall “Satisfactory” rating in the state of North Carolina, with “High Satisfactory” ratings for the lending and investment tests, and a “Low Satisfactory” rating for the service test. With respect to the Winston-Salem MSA, Capital Bank’s CRA PE detailed that the bank operated 10 branches within the AA. The CRA PE noted that the bank’s level of lending reflected good responsiveness to the credit needs of customers throughout the AA. Specifically, the CRA PE detailed that, the geographic distribution of lending in the AA reflected adequate penetration and borrower distribution reflected good penetration throughout the AA. With respect to the Raleigh

¹² 12 CFR 25, App. A(a)(2); 12 CFR 345, App. A(a)(2).

¹³ See Office of the Comptroller of the Currency, *Large Bank CRA Examiner Guidance* (Dec. 2000) available at <https://www.occ.treas.gov/news-issuances/bulletins/2000/bulletin-2000-35a.pdf>.

¹⁴ First Tennessee’s CRA PE also detailed that the Bank ranked 29th among 36 financial institutions in the North Carolina AA’s, and its deposits totaling \$14.6 million represented .03 percent of the deposit market share.

MSA, Capital Bank's CRA PE detailed that the bank operated 12 branches within the AA. The CRA PE noted that the bank's level of lending reflected adequate responsiveness to the AA's credit needs. Further, the CRA PE detailed that the geographic distribution reflected adequate penetration and the borrower distribution reflected poor penetration throughout the assessment area. The CRA PE highlighted the bank's excellent level of qualified investments and relatively high level of CD loans in the AA.

Capital Bank's CRA PE also detailed a variety of CD activities that benefited LMI borrowers throughout the bank's North Carolina AAs. During the evaluation period, Capital Bank issued 334 CD loans totaling \$87.7 million and \$35 million in CD investments. These contributions went towards financing and investing in affordable housing projects, economic development, and social services.

In addition to the above concerns regarding both banks' past performance, one commenter also expressed concerns regarding allegations or evidence of past fair lending violations by both institutions. Pursuant to 12 CFR 25.28(c) and 12 CFR 345.28, the results of the OCC's or FDIC's evaluation of a bank's CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices. The OCC or FDIC may lower the overall rating of an institution based on findings of discriminatory or other illegal credit practices in any geography by the bank, or in any AA by any affiliate whose loans are considered as part of the bank's lending performance. As detailed above, the CRA PEs for both banks concluded that the evidence of discriminatory credit practices did not affect their CRA ratings.

The OCC has reviewed information pertaining to the matters noted in the banks' CRA PEs, and did not identify any concerns that would impact this transaction. The combined entity will be subject to the OCC's ongoing supervision to identify heightened fair lending risk, and where appropriate, to conduct targeted supervisory activities to ensure that such risks are addressed.

B. Convenience and Needs

As detailed above, one commenter expressed concerns about First Tennessee's progress and ability in meeting the goals in its CRA Plan. Specifically, this commenter expressed concerns regarding First Tennessee's current and prospective home mortgage lending levels, CD activities, and small business lending. In response to the commenter's concerns, First Tennessee represented that it has met, and in some cases exceeded, the goals in its CRA Plan. First Tennessee also supplied tables, figures, and extensive information in connection with its progress to date for each of the MSAs in its footprint.

In connection with home mortgage lending, First Tennessee emphasized its commitment to lend to LMI borrowers. First Tennessee's most recent CRA Plan allocated at least 30% of its HMDA reportable mortgage loans to LMI borrowers or borrowers located in LMI geographies. In response to the commenter's concerns, First Tennessee represented that it has exceeded this goal with approximately 31.1% of its HMDA reportable loans, totaling \$270.5 million, made to LMI borrowers or in LMI geographies since the date of its last CRA PE.¹⁵ First Tennessee further explained that until October 2016, the bank relied upon referral agreements with a non-bank lender to facilitate home mortgage lending for its customers. First Tennessee elaborated that in October 2016, the bank began originating its own home lending in-house via a newly acquired

¹⁵ First Tennessee represented that, since the date of its last CRA PE, 1.61% of its home purchase loans in the Winston-Salem MSA and 22.86% of its home purchase loans in the Raleigh Cary MSA have gone to LMI borrowers.

lender live platform. First Tennessee has represented that after consummation of this transaction, it will adopt Capital Bank's home mortgage origination policies, procedures, and systems across its entire footprint.¹⁶ As detailed above, Capital Bank received a "High Satisfactory" rating for the lending test overall and for the lending test in North Carolina. Moreover, as a North Carolina chartered and headquartered bank, Capital Bank has a significantly larger presence and lending operation in North Carolina as compared to First Tennessee. Accordingly, the addition of Capital Bank's network, systems, resources, and relationships has the potential to enhance First Tennessee's ability to meet the credit needs of its community.

In addition to highlighting its progress in meeting the home lending goals set forth in its CRA plan, First Tennessee also detailed its outreach efforts to engage LMI borrowers. Specifically, First Tennessee highlighted products and services it employs to meet the credit needs of its customers—including low-cost checking accounts,¹⁷ and mobile and online banking. In support of its outreach efforts, First Tennessee explained that it engaged in a partnership arrangement with "Operation HOPE," a nonprofit organization committed to empowering those who earn less than \$50,000 per year. First Tennessee explained that, since May 2014, the bank has worked with Operation HOPE to provide free credit and money management, homeownership, and small business counseling through Operation HOPE representatives embedded in 30 of its branch locations. First Tennessee represented that it is committed to continuing its partnership with Operation HOPE after consummation of the underlying transaction throughout its expanded footprint.

In response to the commenter's concerns regarding First Tennessee's CD activities, the bank emphasized its progress and commitment to lend, invest, and serve in the communities throughout its footprint. As evidence of First Tennessee's commitment, the bank pointed to its progress in meeting the goals stated within its CRA plan. First Tennessee represented that it has made \$150 million in total qualified development investments, which totals 5.8 percent of its tier 1 capital, since the date of its last CRA PE.¹⁸ First Tennessee also explained that in 2016 it established a \$50 million CD fund to provide \$3 million annually to agencies that serve LMI communities and individuals. Further, First Tennessee represented that it has made approximately \$400 million in CD loans, which totals 15 percent of its tier 1 capital, from 2014 through the first quarter of 2017.¹⁹

With respect to small business lending, First Tennessee represented that it has exceeded its goal of lending \$495 million of its small business loans to small businesses in LMI census tracts since

¹⁶ First Tennessee represented that it has developed an Affordable Mortgage Program designed to serve the needs of LMI homebuyers that includes features such as no private mortgage insurance, alternative credit scores, and flexible underwriting.

¹⁷ First Tennessee also responded to one of the commenter's concern regarding high-to-low debit sequencing, which the commenter asserted is less advantageous to LMI borrowers. First Tennessee explained that it does not process debits in high-to-low sequence. Rather, First Tennessee represented that it posts non-returnable debits, such as wires, debit card and Automated Teller Machine transactions in time-stamp order, followed by non-time stamped non-returnable debits such as checks and money orders.

¹⁸ First Tennessee represented that, since the date of its last CRA PE, it has made \$1.4 million in CD investments in the Winston-Salem MSA and \$1.74 million in CD investments in the Raleigh-Cary MSA. First Tennessee detailed that these investments went towards community groups, educational services, and charities that work with LMI borrowers and geographies.

¹⁹ First Tennessee represented that, since the date of its last CRA PE, it has made \$3.45 million in CD loans in the Winston-Salem MSA, and \$24.5 million in CD loans in the Raleigh-Cary MSA. First Tennessee detailed that these

the date of its last CRA PE.²⁰ Noting Capital Bank's strength as a small business lender, First Tennessee elaborated that it plans to build upon the small business lending operations of the combined institution. To start, First Tennessee stated that it is aiming to obtain Small Business Administration (SBA) preferred lender status by building upon its portfolio of SBA loans. Lastly, First Tennessee detailed that it aims to direct more attention to small businesses by continuing to support and fund CD institutions that work with small businesses.²¹

C. Fair Lending

As detailed above, one commenter expressed concerns regarding the banks' lending levels to African American and Hispanic borrowers based on an analysis of 2016 HMDA data. It should be noted that HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data does not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor does HMDA data fully reflect the range of a bank's lending activities and efforts.

With respect to the commenter's concern's regarding First Tennessee's HMDA reportable loan data, First Tennessee represented that it previously suspended its mortgage origination line of business and just recently re-entered the home mortgage lending market in late 2016. Previously, First Tennessee referred mortgage applications to a non-bank mortgage lender pursuant to a referral arrangement. First Tennessee terminated this arrangement in late 2016 and began originating loans in-house, which, over time, is expected to increase the bank's HMDA reportable lending. As detailed above, First Tennessee plans to strengthen its conventional home mortgage lending business by adopting Capital Bank's home mortgage origination program after consummation of the proposed transaction. Accordingly, First Tennessee indicated that this merger presents the potential to increase HMDA reportable originations to minority borrowers and borrowers residing in majority-minority geographies.

First Tennessee also represented that it plans to adopt a number of new products and services that will enhance its reach to both LMI and minority borrowers. First Tennessee detailed that such products include the HomeReady program, which is a Fannie Mae sponsored affordable home mortgage program for LMI borrowers. Further, First Tennessee represented that it will continue to use a variety of marketing avenues to reach potential borrowers through direct marketing, billboards, radio, and other advertising channels. With respect to direct marketing, First Tennessee represented that it transmits approximately 650,000 direct mailings each year to prospective customers residing in majority-minority census tracts, and will continue to make such outreach efforts after consummation of the proposed transaction.

loans went to community development groups, affordable housing developers, and non-profits geared towards aiding LMI borrowers and geographies.

²⁰ First Tennessee represented that, since the date of its last CRA PE, 20.57 percent of its small business loans in the Raleigh-Cary MSA and 24 percent of its small business loans in the Winston-Salem MSA were made to borrowers in LMI geographies. Further, 24.82 percent and 16 percent of loans made in the Raleigh-Cary and Winston-Salem MSAs, respectively, went to small businesses with revenues of \$1 million or less.

²¹ First Tennessee represents that it works with, for example, the Support Center, a CD financial institution based in Raleigh, North Carolina, that provides small business loans and financial training to start-ups and existing business and lending services to community-based organizations.

Regarding the commenter's concerns with Capital Bank's lending record, Capital Bank detailed its efforts to market and lend to minority borrowers and to majority-minority communities. Specifically, First Tennessee represented that Capital Bank just began a multifaceted outreach effort in 2017 to better reach minority borrowers. First Tennessee explained that Capital Bank's minority outreach efforts include targeted product mailings and ongoing contact with businesses and non-profit organizations. Further, First Tennessee noted Capital Bank's efforts to recruit and retain a diverse team of mortgage loan officers, and the recent creation of a community lending mortgage loan officer position focused on smaller dollar home mortgage loans and community outreach. First Tennessee also noted Capital Bank's plans to hire more loan officers from historically black colleges and universities in the fall of 2017.

D. Summary of CRA and Convenience and Needs Considerations

As discussed above, the CRA requires that the OCC take into account the banks' performance under the CRA in considering the application. In addition, the BMA requires the OCC to consider the convenience and needs of the communities to be served. Based on the OCC's analysis, including information gathered during the ongoing supervisory process, the OCC did not identify information inconsistent with approval of this application.

The OCC has fully considered and assessed the issues and concerns raised by individuals and community organizations relating to various aspects of the banks' activities including, but not limited to: (i) the efficacy of the resulting bank's proposed CRA plans; (ii) each bank's level of community outreach; (iii) each bank's CD investment strategy; (iv) each bank's level of small business lending; (v) First Tennessee's level of CD lending activity; (vi) First Tennessee's recent branching activity; and (vii) each bank's product offerings, in particular the availability of products to serve the needs of LMI persons and communities. After review of (i) the banks' records; (ii) the AIR Responses; and (iii) information available to the OCC as a result of its supervisory responsibilities, the OCC has determined that First Tennessee has appropriate systems in place and the record supports approving the application, subject to the condition set forth in Section VII below.

VII. Conditions of Approval

This approval is subject to the following conditions:

1. First Tennessee shall comply with the requirements of the October 6, 2017 letter of agreement executed with the Department of Justice.
2. First Tennessee shall divest or conform its investment in Ridgeway Tennessee, LP within two years of consummation of the merger.

These conditions of approval are conditions "imposed in writing by a Federal Agency in connection with any action on any application, notice or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

VIII. Consummation Requirements

The district office must be advised in writing at least 10 days in advance of the desired effective date for the transaction, so it may issue the necessary certification letter. The effective date must occur after any other required regulatory approval. If the transaction is not consummated within six months from the date of this letter, the approval shall automatically terminate unless an extension is granted.

We will not issue a letter certifying consummation of the transaction until after we have received: (1) An original secretary's certificate for each bank certifying that the shareholders have approved the proposed transaction; (2) An original secretary's certificate for each bank certifying that a majority of the board of directors have agreed to the proposed transaction; (3) an executed merger agreement; (4) documentation that any conditions contained in this decision have been satisfied; and, (5) documentation that any other required regulatory approvals have been obtained.

This decision and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. Our decision is based on the representations made in the application, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind this decision if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence regarding this application should be addressed to Pansy G. Hale, National Bank Examiner/Licensing Analyst and should reference the OCC control number. A separate letter is enclosed requesting your feedback on how we handled the referenced application. We would appreciate your response so we may improve our service. If you have any questions, please contact Pansy G. Hale at (214) 720-7052.

Sincerely,

signed

Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosures: Attachment
Survey Letter