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Comptroller of the Currency  
Administrator of National Banks

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Western District Licensing  
1225 17th Street, Suite 1800  
Denver, Colorado 80202

**CRA Decision #152**  
**November 2012**

October 4, 2012

Donald J. Toumey, Esq.  
Sullivan & Cromwell LLP  
125 Broad Street  
New York, New York 10004-2498

Re: Application for Prior Approval to Merge Santa Barbara Bank & Trust, National Association, Santa Barbara, California into Union Bank, National Association, San Francisco, California (Application Control Number: 2012-WE-02-0007)

Dear Mr. Toumey:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application by Union Bank, National Association, San Francisco, California (“Union”) to merge Santa Barbara Bank & Trust, National Association, Santa Barbara, California (“SBB&T”) into Union. This approval is granted after a thorough evaluation of the application, other materials you have supplied, and other information available to the OCC, including representations made in the application and by Union’s representatives during the application process.

### **Background**

Following consummation of the acquisition of SBB&T’s holding company by Union’s holding company,<sup>1</sup> Union proposes to merge with SBB&T. Consequently, at the time of the merger, Union and SBB&T will be affiliates. Union’s main office is located in California and it has branches in California, Illinois, New York, Oregon, Texas, and Washington. SBB&T’s main office is located in California and it has branches only in California. Following the merger, Union seeks to retain as branches the main office and branches of SBB&T, in addition to retaining its own main office and branches. Union further seeks to retain SBB&T’s three subsidiaries, two of which provide investment advisory services, and one of which serves as a trustee of deeds of trust for which SBB&T is the beneficiary. Both Union and SBB&T have been granted fiduciary powers pursuant to 12 U.S.C. § 92a.

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<sup>1</sup> UnionBanCal Corp., the holding company of Union, has applied to the Board of Governors of the Federal Reserve System (“FRB”) for prior approval to acquire by merger Pacific Capital Bancorp, the holding company of SBB&T. The merger agreement between Union and SBB&T provides that the bank merger will take place after the holding company acquisition of Pacific Capital Bancorp is consummated.

## Legal Authority

### *Merger of Union and SBB&T*

Mergers between national banks located within the same state are authorized under 12 U.S.C. § 215a. Both Union and SBB&T are located in California. Because the two banks are located within the same state, their merger is authorized under Section 215a.<sup>2</sup>

### *Retention of Branches*

Union has also requested to retain as branches the main office and branches of SBB&T following the merger. The retention of branches following a merger is governed by the McFadden Act, 12 U.S.C. § 36. Under Section 36(b)(2)(A), a national bank may retain as branches the main office and branches of the target bank in a merger transaction if the national bank could establish them as new branches under 12 U.S.C. § 36(c). Section 36(c) permits a national bank to establish and operate a new branch at any point within the state in which the bank is situated if state statutory law would permit a state bank to establish such a branch.<sup>3</sup> The statutory law of California, where the main office and all branches of SBB&T are located, expressly permits a bank to establish and maintain branches at the head office and branches of the target bank following a merger.<sup>4</sup> Therefore, Union may retain as branches the main office and branches of SBB&T following the merger under Section 36(b)(2)(A). Union is further permitted to retain its own main office and branches pursuant to Section 36(b)(2).

### *Retention of SBB&T's Subsidiaries*

Union further seeks to acquire and retain SBB&T's operating subsidiaries following the merger. The activities engaged in by SBB&T's subsidiaries—investment advisory services and serving as a trustee on deeds of trust for which SBB&T is the beneficiary—are permissible activities for an operating subsidiary of a national bank. *See* 12 C.F.R. § 5.34(e)(5)(v)(I), (e)(5)(vii). The OCC has reviewed Union's proposed acquisition and retention of SBB&T's subsidiaries and determined that it is permissible.

## Bank Merger Act

Mergers between national banks are subject to review under the Bank Merger Act, 12 U.S.C. § 1828(c). Under the Bank Merger Act, the OCC may not approve a merger transaction that would have anti-competitive effects.<sup>5</sup> The Act also requires the OCC to consider the financial

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<sup>2</sup> Although this merger involves a national bank with operations in multiple states (Union), it does not come under the interstate merger provisions of 12 U.S.C. § 1831u, because those provisions address only mergers between insured banks with different home states. *See* 12 U.S.C. § 1831u(a)(1). The home state of a national bank is defined as “the State in which the main office of the bank is located.” 12 U.S.C. § 1831u(g)(4)(A)(i). Here, both Union and SBB&T have their main offices in the same state: California.

<sup>3</sup> For purposes of Sections 36(b)(2) and 36(c), a national bank is “situated” in any state in which it has a main office or branch. *See* Corporate Decision No. 97-68, Part II-B.

<sup>4</sup> Cal. Fin. Code § 4888(a)(1).

<sup>5</sup> 12 U.S.C. § 1828(c)(5).

and managerial resources and future prospects of each institution involved, the convenience and needs of the community to be served, the effectiveness of each institution in combating money laundering, and the risk of the transaction to the stability of the United States banking or financial system.<sup>6</sup>

#### *Competitive Analysis*

We considered the anti-competitive effects of this transaction and found them consistent with approval. In addition, on April 10, 2012, the Department of Justice concluded that the bank merger would not have a significantly adverse effect on competition.

#### *Financial and Managerial Resources and Future Prospects*

Union will remain in satisfactory condition and well capitalized following the merger. Management appears capable of successfully completing this acquisition. The future prospects of the resulting institution are favorable.

#### *Convenience and Needs of the Community to be Served*

The merger of SBB&T with and into Union will not have an adverse effect on the convenience and needs of the community. SBB&T customers will not lose access to products and services, and will gain access to Union's products and services, including its large number of branches and ATMs, small-business lending products, commercial banking, online banking, and capital markets products and services. Union has represented that it will comply with applicable branch closing regulations should it decide to close any branches at a later date.

#### *Effectiveness in Combating Money Laundering*

We reviewed the effectiveness of both Union and SBB&T in combating money laundering and found their records consistent with approval.

#### *Risk to the Stability of the U.S. Banking System*

Section 604(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) ("Dodd-Frank Act") requires the OCC to consider, when reviewing transactions under the Bank Merger Act, the risk to the stability of the United States banking or financial system. The OCC generally looks to six factors when applying this standard: (1) whether the proposed transaction would result in material increase in risks to financial system stability due to an increase in size of the combining firms; (2) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining firms; (3) whether the transaction would materially increase the extent of the interconnectedness of the financial system; (4) whether the transaction would materially increase the extent to which the combining firms contribute to the complexity of the financial system; (5) whether the transaction would materially increase the extent of cross-border activities of the combining firms; and (6) the

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<sup>6</sup> 12 U.S.C. § 1828(c)(5), (11).

relative degree of difficulty of resolving the combined firm. Applying these standards, we conclude that the proposed merger does not pose a risk to the U.S. banking or financial system.

Size: While Union is large from an absolute size standpoint, its size alone is not an indication of a risk to the U.S. banking and financial system. With total assets of approximately \$87.3 billion as of June 30, 2012, the merger with SBB&T, on pro-forma basis, would increase Union's assets size by only 6.7 percent to \$92.4 billion. This results in Union remaining 21st amongst the largest insured depository institutions in the U.S.<sup>7</sup>

Union's market share for deposits, after consummation of the transaction, would increase \$4.1 billion or 4 basis points. As of June 30, 2012, Union's market share would amount to 0.77 percent of the total amount of domestic deposits of insured depository institutions in the United States.<sup>8</sup>

Substitutability: Union and SBB&T both employ a community bank business model and both offer traditional business and consumer credit products and banking services. These products and services are offered by some 310 depository institutions in the state of California. This includes 83 depository institutions in the San Francisco market and 23 in the Santa Barbara market. These markets include Wells Fargo Bank, N.A., Bank of America, N.A., JPMorgan Chase, N.A., Citibank, N.A., and U.S. Bank, N.A., among others.<sup>9</sup> Because Union and SBB&T are engaged in basic banking activities and neither is a market leader in terms of its market share for any product or service, and given the number of substitute providers that could offer these products or services, it does not appear that there would be a disruption in availability of credit products and banking services should the combined Union and SBB&T entity become distressed.

Interconnectedness: The proposed acquisition will not increase the interconnectedness or complexity of the U.S. banking or financial system. Union and SBB&T are not market makers in any financial markets. Following consummation of the merger transaction, Union does not plan to change its operating model or engage in any business activities or participate in markets in a manner that in the event of financial distress would cause significant disruptions or risks to other depository institutions. Union's use of wholesale funding is minimal. In addition, there would not be any increase in the exposure to any of the three largest counterparties of either Union or SBB&T as a result of the consummation of the merger transaction.

Complexity: As noted above, Union and SBB&T engage in traditional banking activities. Neither bank, individually or on a combined basis, is a market maker in derivatives, or serves as a core clearing and settlement organization for critical financial markets. Union and SBB&T have virtually no complex assets or trading books. The combined Union and SBB&T entity would not contribute to the overall complexity of the U.S. banking or financial system.

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<sup>7</sup> Asset size ranking based on call report data for all FDIC insured institutions as of June 30, 2012.

<sup>8</sup> Calculated using the June 30, 2012 "Statistics on Depository Institutions" database available on the FDIC website, [www.fdic.gov](http://www.fdic.gov).

<sup>9</sup> Data derived from the June 30, 2012 "Deposit Market Share Report" database available on the FDIC website, [www.fdic.gov](http://www.fdic.gov).

Accordingly, a disruption in Union's ability to continue to provide these services after the merger with SBB&T would not pose a significant risk to the U.S. markets.

Cross Border Activity: Union has no appreciable cross-border activity and SBB&T has none. As a result, the risk relating to these activities will not increase after the two are merged. In addition, the combined organization would not engage in the provision of critical services whose disruption would impact the macroeconomic condition of the U.S. by disrupting trade or resulting in increased resolution difficulties.

Resolution: The size, operations, activities and complexity of Union and SBB&T on a combined basis will not be fundamentally different than their current operations. Union's relatively limited expansion as a result of the SBB&T merger does not alter the degree of difficulty of resolving Union following this transaction.

Accordingly, the OCC finds the merger consistent with the requirements of, and relevant considerations under, the Bank Merger Act.

### **Community Reinvestment Act**

In addition to the review factors of the Bank Merger Act, the Community Reinvestment Act ("CRA") requires the OCC to take into account the records of the institutions' performance in helping to meet the credit needs of their communities, including low- and moderate-income ("LMI") neighborhoods, when evaluating a merger application.<sup>10</sup> The OCC considers the CRA performance evaluation ("PE") of each bank involved in the merger. Our review of the banks' records and other information available to the OCC as a result of its regulatory responsibilities reveals that the banks' records of helping to meet the credit needs of their communities are consistent with approval of this application.

#### *Union*

Union's most recent PE, dated June 1, 2009, and issued by the OCC,<sup>11</sup> assigned the bank an overall "Outstanding" rating. Among the major factors supporting the "Outstanding" overall rating were: (i) a geographic distribution of loans that was good for small businesses and adequate for home mortgages; (ii) a borrower distribution of loans that was good for small businesses, representing the bank's primary lending focus, and poor for home mortgages, which is discussed further below; (iii) excellent community development lending; (iv) strong levels of community development investments that were heavily focused on affordable housing and small business development needs; and (v) an excellent distribution of branch offices that made Union's products and services readily accessible to geographies and individuals of different income levels. The bank's overall CRA rating was a blend of the ratings of the states in which

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<sup>10</sup> See 12 U.S.C. §§ 2903(a), 2902(3)(E); 12 C.F.R. § 25.29(a)(3).

<sup>11</sup> Union was examined by the OCC as a large bank under the lending, investment, and service tests. The bank received "Outstanding" ratings on the investment and service tests and a "High Satisfactory" rating on the lending test. The evaluation period for the 2009 PE was generally 2005 through 2008. PEs issued by the OCC may be found at <http://www.occ.treas.gov/tools-forms/tools/compliance-bsa/cra-perf-eval-search.html>.

the bank was located; however, California performance was weighted considerably more heavily than the other states, reflecting the fact that 99 percent of the bank's deposits were gathered from California. Likewise, Union's lending volume and branch locations were also most heavily concentrated in California.

Regarding the conclusion that borrower distribution of home mortgage loans was poor, the PE noted that the following factors were considered as providing context to the bank's lending performance. The PE noted that significant housing affordability barriers exist within the state of California. The cost of housing in California is among the highest in the country, and as such, it presents challenges for a financial institution to lend to LMI borrowers so that demographic parity (the proportion of a lender's loans made to LMI borrowers versus the percentage of such borrowers in that assessment area ("AA")) is attained. Between 2005 and 2006, the Housing Opportunity Index ("HOI")<sup>12</sup> was no greater than 14 percent in Union's full-scope AAs. Thus, well over three-quarters of the families in those areas could not afford a median priced home based on their median family income. Although housing affordability eased between 2007 and 2008, this was largely the impact of prior liberal underwriting practices by some lenders that helped spur high home mortgage delinquency levels, short sales, and foreclosures. Over half of the top 10 lenders (by number of loans) noted in the 2007 HMDA peer market data in nearly all of Union's full-scope AAs were no longer operating. Rather than participate in the aggressive mortgage lending environment and potentially compromise safety and soundness standards, Union used its community development lending channels to help address the affordable housing needs of its AAs. Union also attempted to assist LMI borrowers through its Economic Opportunity Mortgage ("EOM") loan product. These loans are made available to borrowers below certain income levels and provide for underwriting standards that are flexible. The PE further noted that lending to small businesses is the bank's primary lending niche; therefore, weight was placed most heavily on this category of lending when assessing lending performance.

### *SBB&T*

SBB&T's most recent PE, dated September 11, 2007, and issued by the OCC, assigned the bank an overall "Outstanding" rating. At the time of the 2007 PE, SBB&T was known as Pacific Capital Bank, N.A. The bank was renamed in 2011 to SBB&T.<sup>13</sup> Major factors supporting the "Outstanding" overall rating were: (i) an excellent geographic distribution of Home Mortgage Disclosure Act ("HMDA") loans and small loans to businesses and an excellent distribution of loans to businesses with revenues of less than \$1 million in the Santa Barbara and Ventura Metropolitan Statistical Areas ("MSAs"); (ii) an excellent distribution of small loans to businesses by geography, a good distribution of loans to businesses with revenues of less than \$1 million, and an adequate distribution by borrower income and geography of HMDA loans in the Monterey MSA; (iii) the positive impact of community development loans, represented by 91 loans totaling almost \$146 million throughout the bank's eight AAs; (iv) an excellent distribution of branches and a satisfactory level of retail services throughout the bank's AAs; and

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<sup>12</sup> The HOI is a measure of housing affordability that quantifies the share of homes sold in an area that would have been affordable to a family earning the local median income based on standard mortgage underwriting standards.

<sup>13</sup> Pacific Capital Bank, N.A. was examined by the OCC as a large bank under the lending, investment, and service tests. The bank received "Outstanding" ratings on the lending and investment tests and a "High Satisfactory" rating on the service test. The evaluation period for the 2007 PE was generally 2003 through 2006.

(v) a satisfactory level of community development services targeted to LMI individuals within the AAs. The bank's overall rating was based on those AAs with the greatest loan volume, with the Santa Barbara AA receiving the most weight as it comprised 38 percent of the bank's total volume of loans.

### *Impact on CRA Rating*

Pursuant to 12 C.F.R. § 25.28(c), the evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. The most recent PEs for the two banks involved in this transaction noted that no evidence of discriminatory or other illegal credit practices had been identified.

Section 1025 of the Dodd-Frank Act assigns to the Consumer Financial Protection Bureau ("CFPB") exclusive examination authority, and primary enforcement authority, to ensure compliance by banks and Federal savings associations ("FSAs") with specified Federal consumer financial laws, if the bank or FSA has more than \$10 billion in assets. Information provided by the CFPB in response to an OCC request did not show any evidence of discriminatory or other illegal credit practices by Union with respect to Federal consumer financial laws. SBB&T, with less than \$10 billion in assets, remains under the compliance authority of the OCC.

### *Public Comments*

The OCC received over 30 letters from the public, primarily expressing comments in support of the merger. However, four letters expressed concerns about the transaction with respect to the banks' record of compliance with the CRA, fair lending laws, and other consumer protection laws.

One of the organizations that initially expressed concerns based on the bank merger application submitted a follow-up letter indicating that, as a result of community pledges<sup>14</sup> that Union had made in the interim and submitted as a supplement to the "Convenience and Needs Considerations" portion of the application, the commenter is now "pleased to report that Union Bank has responded to important concerns raised by non-profit organizations serving low income communities and communities of color in response to their application ...." In addition, "[t]he bank's responsiveness, and the commitments that have been forged in partnership with these organizations, bodes well for the communities affected by the merger ...."

The three remaining letters' concerns are noted below with distinction provided between those that are CRA related, in that they pertain to Union's record of meeting the credit needs of its local community; those that pertain to the bank's credit practices from the standpoint of any discriminatory activities, as defined by the Equal Credit Opportunity and Fair Housing Acts; and those that are related to other consumer protection laws.

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<sup>14</sup> Any pledges, commitments, or representations made by a bank to its community are not enforceable by the OCC.

## CRA

The commenters' CRA-related concerns include an allegation that neither Union nor SBB&T made small farm loans to farms with gross annual revenues of \$1 million or less during the two years prior to the date of the merger application; that the public files of both banks were not current as of April 1, 2012; and that Union may be unable to continue to be responsive to the needs of its LMI communities as it continues to grow.

Regarding the allegation that neither Union nor SBB&T made any small farm loans to farms with gross annual revenues of \$1 million or less during the two years prior to the application, Union represents that in 2011, Union made 190 CRA-reportable small farm loans, totaling over \$25 million, to borrowers with gross annual revenues of \$1 million or less. SBB&T made 9 such loans, totaling over \$1 million. More generally, in 2011, Union made a total of 307 CRA-reportable small farm loans, totaling over \$46 million, while SBB&T made 15 such loans, totaling over \$3 million. It should be noted that the CRA requires banks to meet the credit needs of their community but it does not specify that a bank must engage in particular types of lending.

Regarding the status of the public files of both banks, neither of the banks' CRA PEs noted any issues with the files not being kept current. In addition, Union represented that the files at both banks are maintained and made available to the public for inspection upon request in accordance with 12 C.F.R. § 25.43.

Regarding Union's ability to be responsive to the needs of its LMI communities as it continues to grow, as noted above, the bank submitted information on several community pledges that it recently made as a supplement to the "Convenience and Needs Considerations" portion of the application, indicating that these pledges should serve to underscore the fact that this transaction will not distract the bank from its ongoing community focus. One of the pledges the bank has made focuses on small business lending and economic development, with Union stating that it will (i) invest \$30 million in CRA-qualified small business investment company funding to support small business and economic development in LMI geographies; (ii) establish a pool of \$10 million for Community Development Financial Institution and Community Development Corporation lending; and (iii) increase the number of Small Business Administration ("SBA") loans less than \$150,000 through participation in the SBA Small Loan Advantage program. Union has also created a team specifically designed to assist branches in reaching out to customers needing small balance loans.

Another of the pledges the bank described focuses on single-family, affordable-housing lending through (i) its EOM loan product, which is designed to make home ownership more affordable for LMI households; (ii) development of a lending program to support nonprofit agencies engaged in the acquisition and rehabilitation of residential real estate through the National Community Stabilization Trust and similar housing inventory entities, with \$2.5 million set aside for this purpose; and (iii) participating in the Federal Home Loan Bank of San Francisco's "WISH" program to provide down-payment assistance to qualified first-time homebuyers. The EOM loan product, with reduced interest rates and no points required, provides lower monthly payments than traditional loan programs for eligible borrowers and properties. EOM loans also allow up to 95 percent financing without private mortgage insurance.



## Fair Lending

Fair lending-related concerns primarily focused on Union's record of lending to minority borrowers and, in particular, to the African American community with respect to small business and mortgage loans. One commenter alleged that Union (i) has been reluctant to provide small business loans to African American borrowers, as demonstrated by the handful of SBA loans it has made to this group; (ii) has had a significantly higher denial rate for home mortgage applications from the African American community than from other applicants; and (iii) has not provided a written commitment detailing the bank's plan to meet the needs of the African American community.

Regarding Union's small business lending, the 2009 PE indicated that both geographic and borrower distribution of small business loans within the bank's full-scope AAs in the state of California were good. The PE noted that this line of business was the bank's major focus.

Union represents that during 2009, 2010, 2011, and through March 30, 2012, it originated 1158 SBA loans, totaling \$263,433,000, throughout its assessment areas. The bank further represents that it offers various special loan programs designed to accommodate small business needs and to foster their development. One of the bank's more prominent programs is its Business Diversity Lending Program ("BDLP"), which focuses on making credit available to credit-worthy small businesses that are at least 51 percent owned and managed by women, minorities, or service-disabled veterans. BDLP is a "special purpose credit program" under the authority of the Equal Credit Opportunity Act and Regulation B. The program employs flexible underwriting standards to provide business credit that otherwise might not be available, or would be available on less favorable terms and conditions. Based on April 30, 2012, data provided by Union, its BDLP portfolio included 151 lines of credit to African American borrowers, representing an outstanding balance of \$3,907,146.

In addition, Union represents that it is its understanding that many of the businesses that one of the commenters seeks to assist are located in the LMI geographies of the bank's San Francisco AA. The 2009 PE indicated that "[i]n the low-income geographies of the [San Francisco] AA, the bank's portion of small loans to businesses significantly exceeds the percentage of businesses located there and its market share of such loans significantly exceeds its overall market share. In moderate-income geographies [of this AA], the percentage of loans significantly exceeds the percentage of businesses located in these geographies. The bank's market share of loans made in moderate-income geographies significantly exceeds its overall market share."

In response to one commenter's concern that denials of home mortgage applications from the African American community are significantly higher than for other applicants, Union represents that, during the combined years of 2010 and 2011, the percentage of residential mortgage applications from African American applicants that were denied was 32.3 percent. During this same period, the bank represents that the percentage of applications from non-Hispanic White applicants that were denied was 30.7 percent. As such, based on this data, a 1.6 percentage point difference was noted in denial rates between African American and non-Hispanic White applicants. The bank further represents that for comparison purposes, aggregate national HMDA data for the year 2010 (the most recent year for which the data were available to the public)

indicated a 1.73 national denial rate disparity ratio between African American and non-Hispanic White applicants.<sup>15</sup>

The OCC believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Although HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether a bank has excluded or imposed higher costs on any group on a prohibited basis. Because of the limitations of HMDA data, the OCC has also taken into consideration other information, including examination reports that provide on-site evaluations of compliance with fair lending and other consumer protection laws, as well as information provided by Union and SBB&T regarding their compliance risk-management systems.

Overall, despite the HMDA data noted in the comment letters, a review of Union's and SBB&T's operations and compliance programs indicates that they are adequate to ensure compliance with fair lending and other consumer protection laws, and as already noted, there is no evidence of discriminatory or other illegal credit practices.

Lastly, one comment letter noted that Union has not provided a written commitment detailing its plans to meet the needs of the African American community. The bank represents that it has been in direct contact with all of the commenters and is committed to continuing its efforts to work with community groups with regard to their CRA and credit access concerns. As a result of the bank's dialogue with these community groups during the application process, Union set forth the various pledges it has made involving its community-focused investments and activities, which were submitted as an addendum to the application. One of the pledges addresses increasing the amount of advertising the bank does in ethnic newspapers, with a goal of enhancing the bank's market share in multicultural markets. Since setting forth these additional pledges in May 2012, the bank represents that it has been developing a 2012-2013 "Multicultural Media Program," focused on increasing the amount it spends on advertising in multicultural media. Union's objectives through this program, among others, are to improve mortgage lending in multicultural and LMI areas and to multicultural and LMI borrowers.

In addition, the bank represents that it has made recent changes to its EOM loan product, which has resulted in significant increases in the volume of mortgage loans to minority, as well as LMI, consumers. In order to further its efforts to reach LMI and multicultural consumers, Union has created a new department, Community Lending and Industry Relations, which focuses on product innovation and business development to its target groups.

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<sup>15</sup> Robert B. Avery, Neil Bhutta, Kenneth P. Brevoort and Glen B. Canner, *The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act*, Federal Reserve Bulletin, vol. 97 at 56-57, table 19 (December 2011).

## Other Consumer Protection Laws

One commenter expressed concerns related to Union's alleged predatory checking account practices, including (i) the lack of clear, uniform and concise account policy and fee disclosures; (ii) the lack of comprehensive information on overdraft options and their costs; and (iii) the bank's high-to-low debit posting order.

Union represents that it has made a variety of changes relating to its overdraft policies, procedures, and controls in the past two years. The bank asserts that it has improved, simplified, and clarified its customer communication and disclosure policies relating to overdrafts, and continues to review this area on an ongoing basis, in order to enhance transparency. The bank's Web site now contains Q&As that address issues raised by the commenter, including clear descriptions of the overdraft options available to customers. Union also represents that the specific high-to-low posting order that the commenter criticized was discontinued in 2010. In May 2011, the bank implemented a customer outreach program to ensure that consumers who use overdraft coverage on more than an occasional basis are made aware of services the bank offers that could help them better manage their accounts. Further, in November 2011, Union reached a \$35 million settlement of a consumer class action lawsuit related to overdraft fees and practices. The settlement agreement has been finalized and the bank will commence payment to class members within 30 days of the date that final approval, scheduled for September 2012, is granted. The bank has also determined that it will preserve service charge-free accounts for customers in low-income areas through the end of 2012.

### *Request for an Extension of the Comment Period and for Public Hearings*

Several of the comment letters received by the OCC requested that the public comment period be extended and that the OCC conduct public hearings in connection with this application. Regarding the request that the public comment period be extended, the general standard that the OCC applies to determine whether to extend a public comment period is set forth in 12 C.F.R. § 5.10, which provides:

The OCC may extend the comment period if (i) the applicant fails to file all required publicly available information on a timely basis to permit review by interested parties or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information; (ii) any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or (iii) the OCC determines that other extenuating circumstances exist.

As to the request for public hearings, the general standard the OCC applies to determine whether to hold public hearings is found at 12 C.F.R. § 5.11(b), which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

After careful consideration of the foregoing factors, the OCC determined not to extend the public comment period or to hold public hearings. However, written comments were accepted and considered in the review of this application after the expiration of the public comment period. As such, the OCC has thoroughly reviewed all of the written comments submitted, including any received after the close of the extension to the public comment period and up to the date of this letter. The OCC is not aware of any reason why the written comments are insufficient or why holding a public hearing would be in the public interest.

### *Summary*

In summary, our review of the application and submitted materials, the public comments and Union's responses to those comments, Union's representations, and supervisory materials of the OCC has not revealed any information inconsistent with approval of this application.

### **Conclusion**

For the reasons set forth above, the OCC hereby approves (i) the merger of Union and SBB&T under 12 U.S.C. § 215a; (ii) Union's retention of SBB&T's main office and branches, in addition to its own main office and branches, under 12 U.S.C. § 36(b); and (iii) Union's acquisition and retention of SBB&T's operating subsidiaries. Comprehensive oversight will continue with respect to the merged entity.

The Western District Licensing Office must be advised in writing in advance of the desired effective date for the merger so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other regulatory approval.

The OCC will issue a letter certifying consummation of the transaction when we receive:

- A Secretary's Certificate from each institution, certifying that a majority of the board of directors approved.
- An executed merger agreement.
- A Secretary's Certificate from each institution, certifying that shareholder approvals have been obtained, if required.
- Documentation that all other conditions that the OCC imposed have been met.

If the merger is not consummated within one year from the date of this approval, this approval will automatically terminate unless the OCC grants an extension of the time period.

This approval, 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. This approval is based upon Union's representations and submissions, and upon 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 merger. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have questions regarding this letter, please contact David Finnegan, Senior Licensing Analyst, at (720) 475-7650 or david.finnegan@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller for Licensing