



**CRA Decision #178
November 2016**

October 19, 2016

Ms. Tamara Wagman
Attorney at Law
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Old City Hall
124 East Fourth Street
Tulsa, Oklahoma 74103

Re:

Application by BOKF, National Association, Tulsa, Oklahoma to acquire Missouri Bank and Trust Company of Kansas City, Kansas City, Missouri (FDIC Certificate #9387)
OCC Control No.: 2016-SO-Combination-147307 OCC Charter No.: 13679

Dear Ms. Wagman:

The Office of the Comptroller of the Currency (OCC) hereby approves the application by BOKF, National Association, Tulsa, Oklahoma (BOKF) to merge Missouri Bank and Trust Company of Kansas City, Kansas City, Missouri (Missouri Bank) with, into, and under the title and charter of BOKF, National Association, Tulsa, Oklahoma. The OCC also grants approval for BOKF to retain its branches located in Missouri and Kansas, and to retain as branches, the main office and branches of Missouri Bank in Missouri and Kansas as part of the Merger. This approval is granted based on a thorough review of all information available, including commitments and representations made in the application, merger agreement, and those of BOKF's representatives.

I. The Transaction

BOKF is a wholly owned subsidiary of BOK Financial Corporation, Inc., a bank holding company located in Tulsa, Oklahoma (BOK Financial). BOKF operates branches in several states, including Missouri and Kansas. Missouri Bank is wholly owned by MBT Bancshares, Inc., Kansas City, Missouri (MBT). Missouri Bank is a state-chartered commercial bank. It operates four banking offices, three in Kansas City, Missouri and one in Prairie Village, Kansas.

The merger transaction will take place in two steps, as follows:

- 1) BOK Financial will acquire 100 percent of the shares of MBT in a cash purchase transaction. MBT will be dissolved and Missouri Bank will become a wholly owned subsidiary of BOK Financial.

2) Missouri Bank will merge with and into BOKF in an intrastate merger transaction.

II. Legal Authority

A. Missouri Bank may merge into BOKF under 12 U.S.C. § 215a

Mergers of national banks, and of state banks, into a national bank “located within the same state,” are authorized under 12 U.S.C. § 215a, which provides in relevant part:

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this subchapter, may merge into a national association located within the same State, under the charter of the receiving association.

The OCC has long held that for purposes of section 215a, a national bank is “located” in its main office state and in any state in which it maintains a branch or branches. In the context of a merger involving an existing interstate national bank, the OCC has concluded that a national bank, with its main office and branch offices in more than one state, is “located” in each such state for the purpose of mergers with other banks in that state. BOKF has its main office and branches in Oklahoma, and has branches in Missouri and Kansas. Missouri Bank has its main office and branches in Missouri, and has one branch in Kansas. Accordingly, both BOKF and Missouri Bank are located in Missouri and Kansas for purposes of section 215a. The merger is authorized under section 215a.¹

B. The resulting bank, BOKF, may retain the offices of both banks after the merger

BOKF has requested OCC approval for the resulting bank to retain BOKF’s main office and branches, and to retain the main office and branches of Missouri Bank as branches.

With respect to BOKF’s existing main office and branches, 12 U.S.C. § 36(b)(2) authorizes a national bank resulting from a merger to retain and operate as a branch any branch that the acquiring bank had prior to the merger, unless a state bank resulting from a merger in the state would be prohibited by state law from retaining an identically situated office of a state bank as a branch. No provision in the laws of Missouri or Kansas prohibits a state-chartered bank, following a merger with another state bank in that state, from retaining its own similarly situated branches in the state. Therefore the resulting bank BOKF may retain its branches under section 36(b)(2)(C).

Regarding retention of the banking offices of Missouri Bank, 12 U.S.C. § 36(b)(2) authorizes a

¹ Additionally, BOKF could have sought approval to merge Missouri Bank with and into BOKF under the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994, which authorizes mergers between insured banks with different home states, 12 USC 215a-1, 1831u. The home state of BOKF is Oklahoma, and the home state of Missouri Bank is Missouri. See 12 USC 1831u(g)(4).

national bank to retain and operate as a branch any office of the target bank which, immediately prior to the merger, was in operation as a main office or branch of the target bank, provided that the resulting bank could establish those locations as new branches of the resulting bank under section 36(c).²

Section 36(c) authorizes a national bank to establish new branches “at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question . . .”

For branching purposes under section 36(c), a national bank is “situated” in any state in which it has a branch or main office and may establish or acquire branches in each state in the same manner as state banks in those states.³ Therefore, both before and after the merger, BOKF is and will be “situated” in Missouri and Kansas for purposes of section 36(c), and Missouri and Kansas law determines whether BOKF may retain the branches of Missouri Bank following the merger.

The Missouri branching statute permits state banks to establish or acquire intrastate branches without geographic restriction.⁴ The branching law in Kansas also permits state banks to establish or operate intrastate branches without geographic restriction.⁵ In addition, Kansas law specifically provides that banks acquiring other banks through a merger may retain any acquired branches.⁶

A national bank situated in Missouri and Kansas, such as BOKF, could establish branches at the locations of Missouri Bank’s main office and branches, under section 36(c). Therefore, following the merger, BOKF may retain and operate the main office and branches of Missouri Bank as branches of BOKF under section 36(b)(2)(A).

III. Bank Merger Act

BOKF’s proposed merger with Missouri Bank is also subject to OCC review under the Bank Merger Act. The OCC reviewed the proposed merger under the criteria of the Bank Merger Act, 12 USC 1828(c), and applicable OCC regulations and policies. Under the Bank Merger Act, the

² For purposes of section 36(c), “new branch” has been interpreted to mean “new to the acquiring bank” and, thus, section 36(c) encompasses establishment of *de novo* branches and acquisition of branches from other depository institutions. *State of Washington v. Heimann*, 633 F.2d 886 (9th Cir. 1980).

³ See *Ghiglieri v. Sun World Nat’l Ass’n*, 117 F.3d 309, 316 (5th Cir. 1997).

⁴ Missouri law permits state-chartered banks to “establish, maintain or operate branches separate and apart from the location designated in its articles of agreement,” with approval from the state director of finance. Missouri Stat. Ann. § 362.107. National banks located in Missouri have the same but no greater right to establish, maintain or operate branches as state-chartered banks. *Id.*

⁵ Kansas law permits state-chartered banks to “establish and operate one or more branch banks or relocate an existing branch bank, anywhere within this state.” Kan. Stat. Ann. § 9-1111(b).

⁶ Kan. Stat. Ann. § 9-1111(e).

OCC generally may not approve a merger that would substantially lessen competition. The Bank Merger Act 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. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 USC 1828(c)(11). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 USC 1828(c)(5). The OCC considered these factors and found them consistent with approval of this application.⁷

IV. Community Reinvestment Act

The Community Reinvestment Act (CRA) requires the OCC to take into account the records of the banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, when evaluating applications under the Bank Merger Act. The OCC considers the CRA performance evaluation (PE) of each bank involved in this transaction. For the reasons discussed below, after a review of these records, information provided by BOKF in response to additional information requests, and other information available to the OCC as a result of its regulatory responsibilities, the OCC has concluded that the banks' records of helping to meet the needs of their communities support approval of this application.

A. BOKF, N.A.

BOKF's most recent CRA PE, dated October 28, 2013, assigned the bank an overall "Outstanding" rating.⁸ The major factors that support this rating include: (i) the bank originated a substantial majority of loans inside its assessment areas (AAs); (ii) the bank's lending activity is good; (iii) overall geographic distribution is adequate, as evidenced by adequate geographic distribution of home mortgage loans; (iv) overall borrower income distribution is good, as evidenced by good distribution of home mortgage loans by borrower income level; (v) community development lending was exceptionally strong, and had a significantly positive impact on the Lending Test in all rating areas except for the state of Maryland, where it had a

⁷ On September 9, 2016, the Securities and Exchange Commission issued a Cease and Desist Order against BOKF based on findings that BOKF, as indenture trustee and or dissemination agent, failed to perform its disclosure and notice obligations to bondholders. These findings relate to BOKF's self-identification of irregularities in its Corporate Trust Department (CT) associated with allegedly fraudulent bond offerings by one customer, Christopher Brogdon. BOKF terminated former senior vice president, Marrien Nielson, who is alleged to have facilitated the fraud, in July 2015. BOKF has begun a series of remedial actions to address deficiencies concerning the administration of the CT. The SEC's Cease and Desist Order requires BOKF to pay a civil money penalty of \$600 thousand and to disgorge fees earned (plus interest), for an aggregate payment of \$1.6 million. The OCC is satisfied that the proposed transaction will not impede remediation efforts.

⁸ A copy of the CRA PE will be available at: <http://www.occ.gov/tools-forms/compliance-bsa/cra-pref-eval-search.html>. In addition, the OCC provided a copy of the CRA PE to BOKF on September 1, 2016, and 12 CFR 25.43(a)(2) states that a copy must be placed in the bank's public file within 30 business days after its receipt from the OCC. BOKF provided the commenter with a copy of the CRA PE.

positive impact;⁹ (vi) the bank's overall investment performance is considered excellent;¹⁰ (vii) overall branch delivery systems are accessible to all portions of the bank's AAs, including low- and moderate-income geographies; and (viii) the bank provides an overall adequate level of community development services.

B. MBT

MBT's most recent CRA PE, dated July 29, 2013, assigned the bank an overall "Satisfactory" rating.¹¹ MBT demonstrated a satisfactory commitment to community reinvestment that is supported by the following conclusions: (i) a substantial majority of the reviewed small business and home mortgage loans originated by the bank are within the bank's AA, reflecting an excellent commitment to meeting the credit needs of the AA; (ii) an analysis of small business and home mortgage loans demonstrates a poor penetration among businesses of different sizes and to borrowers of different incomes given the bank's business focus in the AA; (iii) an analysis of the geographic distribution of small business and home mortgage loans demonstrates a reasonable dispersion of loans considering demographic information and the location of the bank's offices within the AA; (iv) the bank's average net loan-to-deposit ratio reflects a reasonable willingness to provide credit given the bank's size, financial condition, and AA credit needs; and (v) the bank's community development performance demonstrates adequate responsiveness to community development needs in its AA through community development loans, qualified investments, and community development services, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's AA.

V. Public Comments and Analysis

The Board of Governors of the Federal Reserve System (FRB) received a public comment related to the proposed transaction, which was forwarded to the OCC for consideration in its decision process. The comment addresses BOKF's record of helping to meet the needs of its community, particularly its home mortgage lending to African Americans and Latinos.¹² In

⁹ Loans primarily supported affordable housing initiatives, activities that promoted economic development in the AAs, and activities that revitalized or stabilized low- and moderate-income census tracts.

¹⁰ Investments primarily supported housing, community services, and economic development. Investments were responsive to the identified needs in the defined communities.

¹¹ MBT was evaluated for CRA purposes as an intermediate small bank. The CRA PE ratings were based on a review of the bank's Home Mortgage Disclosure Act (HMDA) data for 2011 and 2012 and a sample of the bank's small business loans originated in the 12 months prior to the date of the examination. A copy of the CRA PE is available at: https://www5.fdic.gov/crapes/2013/09387_130729.PDF.

¹² The commenter also referenced a 2010 anonymous posting on a non-bank internet forum in which an alleged customer of BOKF alleged that BOKF failed to honor a request to close the account. Due to the lack of detail, OCC could not verify the information contained in the posting. BOKF currently has an enterprise wide compliance function. BOKF further represented that it currently completes compliance risk assessments at least annually and escalates findings to the appropriate level of management.

addition, the OCC received a second comment from the same commenter that noted that BOKF had received Low Satisfactory lending test ratings in the states of Texas (TX), Arizona (AZ), and Maryland (MD) and Low Satisfactory service test ratings in Arkansas (AR), Colorado (CO), and Maryland.

The commenter, citing 2014 HMDA data, expressed concerns regarding BOKF's home mortgage lending practices, alleging that the bank has a weak record of lending to people of color and lower income people. Specifically, the commenter asserted that in the Kansas City, Kansas (KS)/Missouri (MO) (Kansas City) Multistate Metropolitan Statistical Area (MMSA), Houston, TX (Houston) Metropolitan Statistical Area (MSA), and Phoenix, AZ MSA (Phoenix MSA), BOKF has a low level of lending to African Americans and Latinos. In addition, in the Houston MSA and Phoenix MSA the commenter asserted that in certain loan categories BOKF had higher denial rates for African American and Latino applicants than for white applicants.

Based on these concerns, the commenter requested an extension of the FRB's and the OCC's comment period and that public hearings on the proposed transaction be held and the application denied. The OCC has carefully considered the commenter's concerns as they relate to the statutory and regulatory factors considered by the OCC when reviewing an application under the Bank Merger Act. These concerns are addressed below.

A. CRA Performance

As mentioned above, pursuant to the requirements of the CRA, the OCC considers the record of the banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, when evaluating applications under the Bank Merger Act. The banks' overall CRA performance is summarized above.

The commenter raised general concerns regarding BOKF's state CRA ratings of "Low Satisfactory" for at least one of the CRA performance tests for the states identified in the comment letter. Appendix A to 12 CFR 25 explains, for purposes of the CRA, the circumstances under which a bank's performance will be rated "Low Satisfactory" for the lending and service tests.¹³ Notably, Appendix A to 12 CFR 25 provides that "[a] bank's performance need not fit

¹³ A bank's performance will be rated "Low Satisfactory" for the lending test if, in general, the bank demonstrates: (i) adequate responsiveness to the credit needs of its AAs; (ii) an adequate percentage of its loans were made in its AAs; (iii) an adequate geographic distribution of loans in its AAs; (iv) an adequate distribution of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank; (v) an adequate record of serving the credit needs of highly economically disadvantaged areas in its AA, low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations; (vi) limited use of innovative or flexible lending practices; and (vii) an adequate level of community development loans. A bank's performance under the CRA will be rated "Low Satisfactory" for the service test, if, in general, the bank demonstrates that: (i) its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its AA; (ii) its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals; (iii) its services do not vary in a way that inconveniences its AAs, particularly, low- and moderate-income geographies and low- and moderate-income individuals; and (iv) it provides an adequate level of community development services. See 12 CFR 25, App. A(b)(1)(iii), (b)(3)(iii).

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.”¹⁴ 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. In each state and for each test that the commenter referenced in its second comment letter, the OCC determined that BOKF’s performance met the criteria required to receive a Low Satisfactory rating for purposes of the CRA. Despite these “Low Satisfactory” ratings, BOKF received an overall “Outstanding” rating based on its aggregate performance in all of its rating areas, which include seven states and one MMSA weighted to account for the percent of deposits, number of branches, and lending activity.¹⁵

The commenter also raised specific concerns about home mortgage lending practices in three areas where BOKF has AAs: the Kansas City MMSA, the Houston MSA, and the Phoenix MSA. In its most recent CRA PE, BOKF received an overall “Outstanding” rating in the Kansas City MMSA based on its performance in its Kansas City AA, which comprised Johnson County, KS, Wyandotte County, KS, and Jackson County, MO. This rating was based on BOKF’s “Outstanding” rating on the lending test, “Outstanding” rating on the investment test, and “Low Satisfactory” rating on the service test. As of the most recent CRA PE, BOKF had three full-service branches and one deposit taking automated teller machine (ATM) in the Kansas City AA. The “Low Satisfactory” service test rating was attributed, in part, to adequate branch distribution in the AA when considering BOKF’s very limited presence in the AA. As a result of the proposed transaction, MBT’s four branches will be added to BOKF’s Kansas City AA, increasing the size of the AA to include Clay County, MO and Platte County, MO.

For the Houston MSA, BOKF’s CRA PE states that in the Houston AA, its lending activity was adequate, overall geographic distribution of home purchase loans was poor, geographic distribution of small loans to businesses was adequate, overall distribution of home mortgage loans by income level of the borrower was adequate, and overall penetration of small loans to small businesses was poor. However, the CRA PE also states that BOKF was a leader in making community development loans in Texas. In the Houston AA, the CRA PE states that community development lending was exceptionally strong, and had a significantly positive impact on lending performance, which compensated for overall poor retail lending performance. For the investment test, BOKF received a “High Satisfactory” rating for the state of Texas, based in part on the investments in the Houston AA, which the CRA PE noted demonstrated adequate

¹⁴ 12 CFR 25, App. A(a)(2).

¹⁵ A low satisfactory rating by itself does not provide a basis for denying or conditioning an application. Moreover, as noted above, BOKF has an overall “Outstanding” rating based on the aggregate performance in all of its rating areas.

responsiveness to AA community development needs based on the volume and type of affordable housing investments. For the service test, the CRA PE states that BOKF's branch distribution in the Houston AA was adequate, when considering near-to-branches.¹⁶ The Houston MSA will not be impacted by the proposed transaction.

Within the Phoenix MSA, BOKF designated Maricopa County, AZ as an AA. The CRA PE states that, based on BOKF's performance in its Phoenix AA, BOKF received a "Low Satisfactory" rating on the lending test, a "High Satisfactory" rating on the investment test, and a "High Satisfactory" rating on the service test. The major factors that support the "Low Satisfactory" lending test rating were: (i) an adequate level of lending for home mortgage loans and small loans to businesses; (ii) an overall very poor geographic distribution of loans, as shown by very poor distribution of home mortgage loans; (iii) an overall adequate borrower distribution of loans, as shown by adequate distribution of home mortgage loans; and (iv) a significantly positive level of community development loans that were responsive to community needs. The Phoenix MSA will not be impacted by the proposed transaction.

BOKF represented that it continues to develop its CRA program and evaluate CRA performance to determine if there are opportunities for improvement. To this end, BOKF represented that it has created a CRA Committee which was chartered and met for the first time on March 25, 2015, and continues to meet quarterly with senior management participation. BOKF represented that the CRA Officer serves as the Chairperson of the CRA Committee and that the role of the CRA Committee is to review current CRA performance levels and underlying CRA and HMDA data quality and integrity, communicate with key stakeholders, assess the risk and impact of CRA and HMDA performance levels, facilitate planning and resources, and report progress to the Compliance Committee for escalation, as necessary. Moreover, to ensure that CRA ratings are maintained at a level that is acceptable to the Board of Directors, the CRA Committee will: (i) identify current trends and propose recommended changes to strategic initiatives; (ii) identify compliance risks; and (iii) evaluate results of initiatives and business plans, business models, and strategies. BOKF stated that the CRA Committee functions as an advisory body, while approval authority for CRA and Fair Lending initiatives is vested in the Fair Lending Steering Committee. BOKF represented that several of the CRA Committee's recommended initiatives have been implemented.¹⁷

¹⁶ The CRA PE states that near-to branches are those in middle- or upper-income census tracts that are within one-half mile of a low- or moderate-income geography. Our evaluation of the proximity of these branches included consideration of available and affordable public transit systems within the AA, and the absence of physical barriers, such as water or highways, that might obstruct convenient access to the branch.

¹⁷ For example, BOKF stated that it implemented the CRA Committee's recommendation that the bank assist Habitat for Humanity with setting up a process to begin selling loans to financial institutions and was the first purchaser of ten loans in majority minority or low- or moderate-income census tracts. BOKF stated that it worked with Habitat for Humanity to put loan packages together so they would be able to sell loans to other financial institutions.

B. Convenience and Needs Analysis

In addition to reviewing the banks' past records of performance, as documented in their respective CRA PEs, the OCC considers "the probable effects of the business combination on the convenience and needs of the community served." 12 CFR 5.33(e)(1)(ii)(C). The OCC's convenience and needs analysis considers any planned branch closures or reductions in services following the proposed transaction and the likely impact on the community. 12 CFR 5.33(e)(1)(ii)(C). The OCC also considers additional relevant factors, including the resulting national bank's ability and plans to provide expanded or less costly services to the community. 12 CFR 5.33(e)(1)(ii)(C).

BOKF represented that it has no plans to close or consolidate existing branches of either institution following consummation of the proposed transaction. As discussed above, MBT's four branches will be added to BOKF's Kansas City AA, and BOKF will expand its AA to include Clay County, MO and Platte County, MO. Thus, BOKF represented that the proposed transaction will provide benefits to the community such as, access to a broader range of customers, and a deeper pool of talent with which to serve the Kansas City market. Further, BOKF has asserted that the additional branches acquired as a result of the proposed transaction will allow for greater opportunities to serve low- and moderate-income and minority consumers.

With regard to deposit products and services, BOKF represented that it will map MBT's customers into BOKF products. In comparing the product offerings of both institutions, based on the information provided by BOKF, it appears that certain customers will experience increased account fees and elimination of the interest bearing feature of their accounts following consummation of the proposed transaction.¹⁸ However, BOKF represented that there are several options for consumers to obtain fee waivers that may enable customers to eliminate the fees associated with their accounts. Further, when comparing the full spectrum of MBT's and BOKF's deposit and lending products, following consummation of the proposed transaction, MBT customers will have access to a range of deposit products and to additional lending products with beneficial features, including features that may benefit low- and moderate-income individuals. BOKF stated that it provides multiple options for consumers to obtain financial services,¹⁹ allowing the consumer to choose the most convenient delivery channel.

BOKF asserted that it has a variety of residential lending products that benefit low- and moderate-income and minority individuals and geographies. Specifically, BOKF represented that it participates in several government sponsored lending programs.²⁰ BOKF also represented

¹⁸ BOKF represented that following consummation of the proposed transaction and conversion of the banks' systems, it will waive transaction account fees for all MBT customers for two statement cycles.

¹⁹ BOKF represented that it delivers financial products and services through retail branch delivery, 24-hour ExpressBank (phone), online banking, mobile banking, internet banking site, loan production office locations, and LMI lenders meeting clients at community organization locations.

²⁰ BOKF represented that it offers the following loan programs: (i) Fannie Mae's HomeReady program – a low down payment program that allows 97 percent loan-to-value with fixed rate 15, 20, and 30 year fully amortizing loans; (ii) Freddie Mac loan program – a loan program offering 10, 15, 20, and 30 year fully amortizing loans; (iii)

that it partners with numerous entities to provide down payment assistance and financial support for affordable housing. In addition, BOKF represented that it intends to continue or increase the level of lending to small businesses by retaining and building upon MBT's small business operating model.

BOKF represented that beginning in 2011, it started focusing on some of its markets (Tulsa, OK; Dallas, TX; Fort Worth, TX; and Kansas City) to increase low- and moderate-income lending penetration levels through its mortgage division by creating a compensation package for loan officers dedicated to low- and moderate-income lending, hiring specialized loan officers dedicated to low- and moderate-income lending, and providing discounted pricing for loans secured by properties located in low- and moderate-income census tracts. BOKF represented that the low- and moderate income lender initiative is ongoing and additional loan officers dedicated to low- and moderate-income lending are being hired. These loan officers are involved in the community organizations serving low- and moderate-income borrowers and have opportunities to meet with the borrower, discuss products and services, and assist the borrower when they are completing an application. To measure the effectiveness of these loan officers, BOKF represented that its Fair Lending Steering Committee and mortgage division management review at least quarterly the low- and moderate-income lending levels in each market compared to the target goal percentage and aggregate peer lending performance. BOKF represented that its loan officers dedicated to low- and moderate-income lending create an enhanced focus on low- and moderate-income census tract by engaging in activities that include low- and moderate-income borrower and census tract outreach efforts, community organization partnerships, program development, homebuyer training, and general involvement within the bank's communities and at BOKF branches.

Additionally, BOKF stated that it is in the process of hiring two loan officers dedicated to low- and moderate-income lending in Phoenix, AZ, two such loan officers in Houston, one such loan officer in Oklahoma City, OK, and one such loan officer in Tulsa, OK.²¹ Moreover, BOKF stated it has employed a loan officer dedicated to low- and moderate-income lending in its Kansas City AA since 2007. BOKF further represented that the Kansas City loan officer dedicated to low- and moderate-income lending is active in community organizations providing assistance to underserved communities, including assistance in financing homes for low- and moderate-income households and in low- and moderate-income neighborhoods in Kansas City.²² BOKF asserted that it will have more opportunities to impact low- and moderate-income

United States Department of Housing and Urban Development's 184 Loan program – a loan program that benefits Native American tribal members and offers purchase money and refinance fixed-rate 25 and 30 year fully amortizing loans; (iv) Federal Housing Administration products – a loan program offering fixed rate 25 and 30 year loans with a 620 minimum FICO score; (v) Veteran's Administration products; and (vi) United States Department of Agriculture Rural Development products.

²¹ In furtherance of these hiring plans, BOKF represented that it has hired two loan officers dedicated to low- and moderate-income lending in the last 45 days, one in Houston, TX, and one in Oklahoma City, OK, and is actively recruiting for the remaining positions.

²² BOKF represented that the program has provided more than \$950,000 in grants and \$4,434,000 for first mortgages through the Neighborhood Stabilization Plan program.

communities in Kansas City as it expands its footprint through the acquisition of MBT. Further, BOKF represented that the proposed transaction will bring additional mortgage lending personnel into the communities currently served by MBT. Further, BOKF represented that in April 2016, its Fair Lending Steering Committee approved target lending goals for low- and moderate-income and minority borrowers and communities in Tulsa, OK; Oklahoma City, OK; Dallas, TX; Fort Worth, TX; Houston, TX; Denver, CO; Albuquerque, NM; Kansas City; Phoenix, AZ; and Fayetteville, AR.

In addition to its deposit and lending products, BOKF serves its community through its community development activities. In the Kansas City AA, BOKF's CRA PE stated that the bank had a significantly positive level of community development loans that were responsive to community needs, an excellent level of qualifying investments, grants, donations that were responsive to community needs, and an adequate level of community development services that were responsive to community needs. BOKF represented that since its last CRA PE, it has originated two affordable housing loans in its Kansas City AA for a total of approximately \$5.78 million. In addition, BOKF represented that since its last CRA PE it has originated the following community development loans that have had a substantial impact on the Kansas City AA: (i) a \$74,000 credit to construct eight housing units in a low-income census tract and Urban Renewal Zone for persons with the late stages of HIV/AIDS; (ii) a \$15.98 million working capital revolving line of credit to a wholesale food company that supported the creation and retention of over 1,000 permanent jobs; (iii) a \$5.7 million low income housing tax credit loan to construct a 72-unit complex, of which 75 percent will have restricted rent for individuals earning less than 60 percent of the area median household income and one unit will be a rent-free homeless unit; and (iv) a \$2.1 million credit facility to purchase owner-occupied commercial real estate as part of a business purchase for a property located in a low-income census tract, a City of Kansas City Enterprise Zone, and a Small Business Administration HUBZone, for which the borrower retained all employees and will hire an additional two to four employees. Further, BOKF represented that its Community Development Banking Group (CDBG) pursues innovative, affordable housing opportunities with the purpose of providing credit funds for the development of affordable housing for low- and moderate-income individuals.²³

BOKF stated that it is still in the process of determining which MBT relationships with community organizations will be maintained. However, BOKF noted that it currently supports several of MBT's existing partners. Further, BOKF represented that it has already identified affordable housing needs in the East Village area of Kansas City located east of the downtown MBT branches as a community development need within the Kansas City community.

In addition to the community development needs of the Kansas City community previously served by MBT and those identified by BOKF, that it partners with multiple organizations in each market through donations and services. For example, BOKF represented that it participates with the Federal Deposit Insurance Corporation's Alliance for Economic Inclusion in both

²³ BOKF represented that CDBG utilizes layered financing sources including: (i) Federal Home Loan Bank Programs; (ii) State Housing Finance Authorities; (iii) Low Income Housing Tax Credits; and (iv) New Market Tax Credits.

Northeastern Oklahoma and Kansas City regions, which provides access to banking services for consumers and small business owners. BOKF further represented that it provides grants to the Tulsa Economic Development Corporation. Additionally, BOKF partners with the Community Action Agency (CCA) of Oklahoma City by providing grants for CAA's Individual Development Account (IDA) program, financial education, and maintaining IDA accounts for their clients.

BOKF represented that it chartered a Community Development Advisory Committee in Kansas City on March 28, 2016. BOKF represented that the Fair Lending Steering Committee also approved a recommendation to create community development advisory committees in each of the bank's major markets by identifying at least three community organizations willing to attend periodic meetings with the CRA Officer and market leaders to discuss community needs, and how BOKF may be able to help meet those needs. BOKF represented that the Community Development Advisory Committee is slated to meet in the first quarter of 2017 and that this would be an opportunity to introduce the combined entity to the community. BOKF further represented that it plans to use this meeting to identify other credit needs in the community surrounding MBT branches.

C. Fair Lending

The commenter, relying on 2014 HMDA data, expressed concern regarding BOKF's level of lending to African American and Latino borrowers in the Kansas City MMSA, Houston MSA, and Phoenix MSA. In addition, the commenter expressed concern that the denial rates for African American borrowers and Latino borrowers were higher than the denial rates for white borrowers in certain loan categories in the Houston MSA and Phoenix MSA.

Regarding the lending concerns raised by the commenter, 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 do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities and efforts. In addition, pursuant to 12 CFR 25.28(c), BOKF's CRA PE, dated October 28, 2013, states that the OCC did not identify evidence of discriminatory or other illegal credit practices with respect to this institution.

In responding to the commenter's concerns, BOKF represented that it has an enterprise-wide Fair Lending Compliance program designed to monitor fair lending risk and ensure compliance with fair lending laws. BOKF represented that key elements of the Fair Lending Compliance program include: (i) Board of Directors (Board) oversight; (ii) quarterly status reports to the Audit Committee of the Board that include updates to the Fair Lending Risk Assessment, reports of high risk issues, and past due remediation plans; (iii) management committee reporting, including updates to the Fair Lending Risk Assessment, CRA Community Development results,

reports of high risk issues, HMDA data testing results, and status of remediation plans;²⁴ (iv) monitoring adherence to corporate policies;²⁵ (v) regular monitoring by the Fair Banking group of customer complaints for potential fair lending concerns;²⁶ (vi) Formal Remediation Procedures that outline the process requirements for risk rating fair lending issues and specify approval requirements associated with remediation plans; (vii) performing an enterprise-wide Fair Lending Risk Assessment, which is updated quarterly; (viii) monitoring of fair lending risk conducted pursuant to the BOKF's Fair Lending Monitoring program;²⁷ (ix) a Third Party Due Diligence program that evaluates third party service providers that may present fair lending risk to the bank; and (x) comparative analysis to identify specific loans that may exhibit heightened fair lending risk.²⁸

BOKF represented that it has a range of residential lending products that benefit low- and moderate-income and minority individuals and geographies, discussed above. With regard to its marketing and outreach activities for its retail lending products, BOKF represented that its marketing efforts are generally directed to the whole market and do not target specific demographic groups. However, BOKF represented that in addition to its general marketing practices, marketing efforts have also been deployed through search engine marketing plans targeting zip codes with low- and moderate-income communities and majority-minority communities where potential applicants are directed to the BOKF website serving their market. BOKF also represented that it has engaged in targeted direct mail and email campaigns.

The commenter expressed specific concerns with regard to BOKF's lending practices in the Kansas City MSA, Houston MSA, and Phoenix MSA. In addition to its retail lending marketing efforts, in the Phoenix MSA, BOKF represented that its activities targeted to minority individuals and communities included sponsorships of the Arizona Latino Media Association, Creciendo Unidos, Local First Arizona Foundation – Fuerza Accelerator Program, and the Hispanic Chamber of Commerce. In the Houston MSA, BOKF represented that it has appointed

²⁴ BOKF represented that it provides monthly status updates to the Compliance Committee and quarterly status updates to Executive Management via the Risk Council and quarterly status updates to the CRA Committee.

²⁵ BOKF represented that its policy adherence monitoring includes the following areas: Fair lending; Fair Credit Reporting Act; Fair Debt Collection Practices Act; Equal Credit Opportunity Act; Loan Originator Compensation; HMDA; CRA; Unfair, Deceptive, and Abusive Acts or Practices; Complaint Management; and Servicing Policy for Mortgage Loans.

²⁶ BOKF represented that when it identifies fair lending concerns through its monitoring of customer complaints, the Fair Banking group engages in an escalated complaint review process to independently investigate the matter. BOKF further represented that when an investigation leads to the identification of a fair lending issue, the Fair Banking group develops a remediation plan and monitors the remediation of any fair lending issues associated with customer complaints. In addition, BOKF represented that all remediation plans are reported to the Compliance Committee on a monthly basis.

²⁷ BOKF represented that all relevant findings are incorporated into the Fair Lending Risk Assessment, and remediation plans are developed when indicated.

²⁸ BOKF represented that findings from its comparative analysis are documented. Additionally, findings are communicated to the pertinent line of business and included in the Fair Lending Risk Assessment.

an employee as Hispanic Market Coordinator to facilitate identifying and meeting the financial service needs of the Hispanic community by coordinating the outreach efforts of other Houston market retail bank employees. BOKF represented that in the Kansas City MMSA, its employees provided financial literacy classes to Spanish speakers through Community Housing of Wyandotte County. Further, in the Kansas City MMSA, BOKF represented that it expects that additional opportunities to serve the low- and moderate-income communities and majority-minority communities will arise through the efforts of the combined organization due to increased resource capacity from BOKF and the proximity of MBT's branches to low- and moderate-income communities and majority-minority communities. In addition, as discussed above, BOKF is in the process of hiring loan officers dedicated to low- and moderate-income lending and has established low- and moderate-income and minority lending goals in several of the markets it serves.

Lastly, in considering the proposed transaction, the OCC reviewed BOKF's 2014 HMDA data in the Kansas City MMSA, Phoenix MSA, and Houston MSA and found lending data that reflected proportions of lending to African Americans and Latinos that were not inconsistent with those alleged by the commenter.²⁹ The OCC's review has not resulted in findings related to fair lending that warrant denial of the pending application. However, BOKF is subject to the OCC's ongoing supervision and any fair lending concerns identified in the course of the OCC's supervisory activities will be addressed as necessary and appropriate in accordance with any applicable statutes and regulations.³⁰

A. Request for Extension of the Comment Period

The commenter requested that the OCC extend the comment period and deny the application. The standard that the OCC applies to determine whether to extend a public comment period is set forth in 12 CFR 5.10(b)(2), 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 persons 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.

²⁹ A statistical analysis of the MSA-level HMDA data was not conducted due to the lack of a statistically relevant sample size.

³⁰ Further, section 1025 of the Dodd-Frank Wall Street Reform and Consumer Protection Act assigns to the Consumer Financial Protection Bureau exclusive examination authority, and primary enforcement authority, to ensure compliance by banks and federal savings associations with Federal consumer financial laws, including the Equal Credit Opportunity Act, if the bank or federal savings association has more than \$10 billion in assets.

After careful consideration, the OCC determined not to extend the public comment period.³¹ None of the reasons set forth in 12 CFR 5.10(b)(2) as justification for extending the comment period were evident in connection with this application.

B. Request for Public Hearing

The commenter requested that the OCC hold a public hearing on the application. The standard that the OCC applies to determine whether to grant or deny a hearing request is set forth in 12 CFR 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, the OCC has determined not to hold a public hearing. The OCC has thoroughly reviewed the public comments that were submitted and is not aware of any reason why the written comments are insufficient or why a public hearing would be in the public interest.

VI. Summary

Accordingly, based upon our review of the respective records of the institutions involved in the proposed merger, the application, the public comments and BOKF's response to the public comments, information provided by BOKF in response to additional information requested from the OCC and the FRB, and supervisory materials and other information available to the OCC as a result of its regulatory responsibilities, we conclude that BOKF's and MBT's records of helping to meet the credit needs of their communities and the probable effects of the proposed transaction on the convenience and needs of those communities are consistent with approval of the application.

VII. Consummation Requirements

The OCC Southern District Licensing 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 also occur after any other required regulatory approval and after the BOK Financial merger. If the transaction is not consummated within six months from the date of this letter, the approval shall automatically terminate unless an extension has been 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

³¹ However, the OCC considered both comments received by the commenter that requested an extension of the comment period.

Ms. Tamara Wagman
BOKF, National Association
2016-SO-Combination-147307

certifying that a majority of the board of directors have agreed to the proposed transaction; (3) an executed merger agreement; and, (4) 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 and questions regarding this application should be directed to Pansy G. Hale, NBE/ Licensing Analyst, Southern District Office, (214)720-7052. Reference the application control number in all correspondence. 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.

Sincerely,

/s/ Beverly Evans
for
Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosure