



January 17, 2023

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Re: Application to merge Bank of the West, San Francisco, California with and into  
BMO Harris Bank National Association, Chicago, Illinois  
OCC Control No. 2022-LB-Combination-325300  
Charter No. 14583

Dear Ms. Spaziani:

The Office of the Comptroller of the Currency (“OCC”) approves the application by BMO Harris Bank National Association, Chicago, Illinois (“BHBNA” or “Bank”) to merge with Bank of the West, San Francisco, California (“BOTW”) (the “Application”). BHBNA will be the surviving bank (the “Resulting Bank”). This approval of the bank merger is granted based on a thorough review of all information available, including commitments and representations made in the Application and by representatives of BHBNA as well as the written comments received and testimony provided at the public meeting held on July 14, 2022.

## **I. Background and Transaction**

BHBNA is a \$164.8 billion national bank headquartered in Chicago, Illinois, operating approximately 520 branches across nine States. The Bank is a wholly-owned subsidiary of BMO Financial Corp (“BFC”), an intermediate holding company and Delaware corporation with its headquarters in Chicago, Illinois. BFC is a wholly owned subsidiary of Bank of Montreal, a foreign financial holding company based in Toronto, Ontario, Canada (“BMO”).

BOTW, headquartered in San Francisco, California, is a state-chartered nonmember bank reporting \$91.8 billion in total assets. It is a wholly-owned subsidiary of BancWest Holding Inc. (“BW Holding”), a Delaware corporation also located in San Francisco, California.

BW Holdings is a wholly-owned subsidiary of BNP Paribas, S.A., a foreign financial holding company based in Paris, France. BOTW operates over 500 branches in 20 States with the majority located in California.

Subject to approval by the Board of Governors of the Federal Reserve System (“FRB”), BFC will acquire BOTW’s parent bank holding company, BW Holding, and thereby its sole subsidiary bank, BOTW, via a share acquisition (the “Acquisition”), following which BW Holding will merge with and into BFC (the “Holdco Merger”). Within one business day of the Holdco Merger, BOTW will be merged with and into BHBNA, with BHBNA remaining as the surviving institution (the “Bank Merger”). The Acquisition, Holdco Merger and Bank Merger, collectively, will be referred to as the “Proposed Transaction.”

## **II. Legal Authority and Analysis**

BHBNA applied to the OCC for approval to merge BOTW with and into BHBNA pursuant to the National Bank Consolidation and Merger Act and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal”), 12 USC 215a-1 and 12 USC 1831u, respectively, and subject to the Bank Merger Act, 12 USC 1828(c) (“BMA”). In addition, BHBNA intends to acquire certain BOTW subsidiaries and investments in connection with the Bank Merger.

### **A. Riegle-Neal**

Riegle-Neal enacted 12 USC 1831u, which authorizes certain interstate merger transactions, as well as 12 USC 215a-1, which authorizes an out-of-state bank to merge with and into a national bank if the transaction is approved pursuant to 12 USC 1831u. Mergers conducted pursuant to Riegle-Neal are subject to the following: (i) compliance with state-imposed age limits, if any, subject to Riegle-Neal’s limits; (ii) compliance with certain state filing requirements, to the extent the filing requirements are permitted in Riegle-Neal; (iii) compliance with nationwide and state concentration limits; (iv) expanded community reinvestment compliance; and (v) adequacy of capital and management skills. The OCC has considered these requirements and determined that the merger satisfies all applicable requirements in Riegle-Neal, including those set forth in 12 USC 215a-1 and 12 USC 1831u.

### **B. The Bank Merger Act**

The OCC also reviewed the Application under the BMA as well as applicable related 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. 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 U.S. banking or financial system. 12 USC 1828(c)(5). Under the Community Reinvestment Act (“CRA”), the OCC must also consider the applicant’s record of meeting the credit needs of its entire community, including low- and moderate-income (“LMI”)

neighborhoods, when considering applications under the BMA. 12 USC 2903(a).<sup>1</sup> As discussed in more detail below, the OCC has concluded that approval of the Bank Merger is consistent with these factors.

### 1. Competitive Analysis

The OCC considered the competitive effects of this transaction and found them consistent with approval. On October 27, 2022, the U.S. Department of Justice did not conclude that the proposed merger would have a significantly adverse effect on competition.

### 2. Financial and Managerial Resources and Future Prospects

Based on information from various sources, including quarterly financial reports, the Application, and supervisory information, both BHBNA and BOTW are in satisfactory financial condition and are well capitalized. The Resulting Bank will be well capitalized at consummation, and financial projections reflect satisfactory capital ratios and earnings projections that appear reasonable.

Similarly, BHBNA and BOTW each currently has, and the Resulting Bank is expected to have, an accomplished and experienced board of directors and senior management team. The Resulting Bank is expected to continue operating in a safe and sound manner and with effective oversight. The OCC finds that approval of the Application is consistent with the financial, managerial, and future prospects evaluative factors.

### 3. 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. The Bank Secrecy Act and anti-money laundering (“BSA/AML”) compliance program at each of BHBNA and BOTW are satisfactory and commensurate with BSA/AML risk profiles of each bank. The OCC finds that the records of BHBNA and BOTW in combating money laundering activities are consistent with approval.

### 4. Financial Stability

The BMA, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), requires the OCC to consider “the risk to the stability of the United States banking or financial system” when reviewing transactions subject to the act.<sup>2</sup> This consideration is separate from other statutory considerations of financial stability, such as those in sections 165 and 604 of the Dodd-Frank Act.<sup>3</sup> Thus, Congress included consideration of financial stability

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<sup>1</sup> See sections III and IV for discussion on the OCC’s conclusions on convenience and needs and CRA.

<sup>2</sup> See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(E).

<sup>3</sup> Section 165 of the Dodd-Frank requires, among other things, the FRB and FDIC to establish and apply enhanced prudential standards for bank holding companies of a certain size. Section 604 amended the Bank Holding Company

concerns not only in the context of prudential requirements at the bank holding company level, but also at both the bank and bank holding company level for mergers subject to the BMA.

When applying this standard, the OCC reviews and analyzes the following factors: (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 institutions; (ii) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions; (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 institutions contribute to the complexity of the financial system; (v) whether the transaction would materially increase the extent of cross-border activities of the combining institutions; (vi) the relative degree of difficulty of resolving or winding up the combined institution's business in the event of failure or insolvency; and (vii) any other factor that could indicate the transaction poses a risk to the U.S. banking or financial system.

Based on an evaluation of each of the aforementioned financial stability factors, the OCC has concluded that the proposed merger does not pose a risk to the stability of the United States banking or financial system. Upon consummation, the Resulting Bank will have approximately \$268.2 billion in total assets and rank as the 13th largest commercial bank.<sup>4</sup> Neither the Resulting Bank nor any of its parent institutions will become a global systemically important bank (GSIB) as a result of the Proposed Transaction.<sup>5</sup> The Proposed Transaction would not cause the Resulting Bank to have a complex organizational structure, add complex interrelationships or any unique characteristics that would complicate resolution of the firm, or otherwise pose a significant risk to the financial system, in the event of financial distress. Further, neither BHBNA nor BOTW engage in business activities or participates in markets to a degree that would pose significant risk to other institutions in the event of financial distress in the Resulting Bank nor would the Proposed Transaction result in a reduction in availability of substitute providers. Therefore, the proposed changes in size, complexity, availability of substitute providers, and interconnectedness are not such that they would pose a significant risk to the financial system in the event of financial distress.

BFC and BHBNA are subject to U.S. resolution planning requirements.<sup>6</sup> As a result of the Proposed Transaction, BHBNA will become subject to more stringent requirements, including for capital, liquidity, and recovery and resolution planning.<sup>7</sup> For example, BHBNA, after the Proposed Transaction, will become subject to Dodd-Frank Act stress testing (“DFAST”)

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Act to require the FRB to “consider the extent to which [a] proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.” *See* 12 USC 1842.

<sup>4</sup> Federal Reserve Statistical Release for Large Commercial Banks as of September 30, 2022, <https://www.federalreserve.gov/releases/lbr/current/>.

<sup>5</sup> *Id.* In addition, we note that the Resulting Bank would be capable of being acquired by a regional financial institution, including potential merger partners that are not GSIBs or subsidiaries of GSIBs.

<sup>6</sup> *See* 12 CFR Parts 243 and 381.

<sup>7</sup> Application, at page 14.

company-run stress testing requirements.<sup>8</sup> BHBNA, after the Proposed Transaction, will also become subject to recovery planning guidelines in Appendix E to 12 CFR 30.<sup>9</sup> In addition, BHBNA will continue to be considered in periodically submitted plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure.<sup>10</sup> These requirements and guidelines establish a framework to effectively and efficiently address the financial effects of severe stress events and avoid failure or resolution.

### **C. Subsidiaries and Investments**

The Resulting Bank is authorized to retain certain of the subsidiaries and investments currently held by BOTW. A national bank “may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under statutory authority.” 12 CFR 5.34(e).

BHBNA will acquire three BOTW operating subsidiaries: (i) CLAAS Financial Services LLC, which provides lease and loan financing for agricultural equipment; (ii) First Santa Clara Corporation, which serves as third party trustee for deeds of trust in residential and commercial real estate financing transactions; and (iii) Ursus Real Estate, Inc., which holds interests in foreclosed properties for BOTW. The activities in the subsidiaries are permissible for the Resulting Bank, and the Resulting Bank may retain them following the Bank Merger.

BHBNA also seeks to temporarily retain Bank West Investment Services, Inc. (“BWIS”), which is a registered investment advisor and licensed insurance agency. A national bank may conduct insurance agency activity directly or in an operating subsidiary from a place with a population of 5000, or without regard to geographic location if the activity is conducted in a financial subsidiary. BHBNA has represented that it will conform or discontinue the insurance agency activity within an 18-month period following the Bank Merger.<sup>11</sup>

BHBNA will additionally acquire a number of BOTW’s public welfare equity investments pursuant to 12 USC 24(Eleventh) and 12 CFR 24. BOTW made investments totaling approximately \$598,000,000 in community development financial institutions, which have been certified by the U.S. Department of the Treasury’s CDFI Fund, and investments that use Federal Low Income Housing Tax Credits, across the United States. BOTW attests that these investments comply with the public welfare and the investment limit requirements of

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<sup>8</sup> 12 CFR Part 46.

<sup>9</sup> See 12 CFR Part 30, Appendix E. A covered bank for purposes of resolution planning includes one with consolidated assets over \$250 billion. For institutions with average total assets of less than \$250 billion but which subsequently becomes a covered bank shall comply with this rule within 12 months of becoming a covered bank. See also Comptroller’s Handbook: Recovery Planning (March 2019).

<sup>10</sup> 12 CFR 243.

<sup>11</sup> See *Comptroller’s Licensing Manual*, “Business Combinations” (2018), at 49 (“The OCC generally permits the resulting bank a reasonable period of time, usually not more than two years after consummating the combination, to divest or conform nonconforming assets or discontinue or conform nonconforming activities of the target without undue hardship.”).

12 CFR 24.3 and 24.4. Together with BHBNA's public welfare investments, the aggregate public welfare investments will represent approximately 6.49 percent of the Resulting Bank's capital and surplus. In no event shall BHBNA's aggregate investments and commitments under 12 USC 24(Eleventh) exceed 15 percent of its capital and surplus. BHBNA shall maintain in its files information adequate to demonstrate that the investments it acquires from BOTW meet the standards set out in 12 CFR 24.3, and that BHBNA is otherwise in compliance with the requirements of 12 USC 24(Eleventh) and 12 CFR 24. These investments have been reviewed for permissibility by OCC Community Affairs, and the Resulting Bank may retain these investments following the Bank Merger.

### **III. Community Reinvestment Act and Convenience and Needs**

In evaluating the Proposed Transaction, the OCC has carefully considered: (i) BHBNA's most recent CRA performance evaluation ("PE"); (ii) information available to the OCC as a result of its supervisory responsibilities; (iii) oral and written public comments; and (iv) information BHBNA provided in response to the public comments. The OCC received 1,079 written comments on the Application and also received testimony from 77 members of the public at a public meeting, conducted in coordination with the FRB, on July 14, 2022 ("Public Meeting"). The OCC carefully considered the concerns raised by commenters and those who testified at the Public Meeting as they relate to the statutory and regulatory factors the OCC considered in acting on the Application, including performance under the CRA and the probable effects of the transaction on the convenience and needs of the communities to be served. Based on this review, the OCC has concluded that BHBNA's record of performance under the CRA and the probable effects of the merger on the convenience and needs of the community to be served are consistent with approval of the Application.

#### **A. Community Reinvestment Act**

The OCC considers the CRA record of performance of the applicant bank in helping meet the credit needs of its communities, including LMI neighborhoods, when evaluating applications under the BMA.<sup>12</sup> Accordingly, the OCC considered BHBNA's CRA PE and, as discussed in detail below, based on this review, the OCC has concluded that BHBNA's record of CRA performance is consistent with approval of the Application.

BHBNA received an overall rating of "Outstanding" on its most recent CRA PE, dated April 6, 2020 ("2020 PE"), as well as a rating of "Outstanding" on each of the lending, service, and investment tests.<sup>13</sup> BHBNA's 2020 PE, issued by the OCC, covered an assessment period from January 1, 2017, through December 31, 2019, with consideration of home mortgage loans, small loans to businesses and farms, community development loans, qualified investments, and community development ("CD") and retail services. BHBNA also received an overall composite rating of "Outstanding" in three of the four multistate metropolitan statistical areas ("MMSA") in which it was evaluated and "Satisfactory" in the remaining MMSA, as well as an overall

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<sup>12</sup> See 12 USC 1828(c); 12 CFR 5.33(e)(1)(iii)(A); 12 CFR 25.29.

<sup>13</sup> A copy of BHBNA's most recent CRA PE is available at: <https://occ.gov/static/cra/craeval/Nov20/14583.pdf>.

composite rating of “Outstanding” in five of the seven States in which it was evaluated and “Satisfactory” in the remaining two States. BHBNA further received a rating of either “Outstanding” or “High Satisfactory” for each of the lending, investment, and service tests in each evaluated MMSA and State.

These ratings were based on: overall geographic and borrower distributions of the Bank’s originations and purchases of home mortgage loans and small loans to businesses that were at least “good” in all but one of the four MMSAs and in all but two of the seven States; BHBNA’s status as a leader in CD lending, which was effective in addressing community credit needs in all four MMSAs and all seven States;<sup>14</sup> qualified investments that were effective and responsive in addressing community credit needs in all four MMSAs and all seven States; and branches and alternative delivery systems that were at least accessible to geographies and individuals of different incomes and responsive in helping the bank provide services across the community in all four MMSAs and all seven States.

## **B. Convenience and Needs**

Under the BMA, the OCC also considers the convenience and needs of the community to be served by the Resulting Bank.<sup>15</sup> As explained in the “Public Notice and Comments” booklet of the *Comptroller’s Licensing Manual* (April 2022), the convenience and needs factor is distinguished from the CRA requirement in that the convenience and needs analysis is prospective, whereas the CRA requires the OCC to consider the applicant’s record of performance. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis.<sup>16</sup> Based on plans of the Resultant Bank to expand BHBNA products and services to current BOTW customers, significantly reduce fees associated with non-sufficient funds for BOTW customers, and retain all BOTW branches after the Proposed Transaction, the OCC has concluded that the probable effects of the merger on the convenience and needs of the community to be served are consistent with approval of the Application.

### Community Benefits Plan

Several commenters stated that BHBNA would not be able to establish that the proposed merger meets the convenience and needs of communities absent a community benefits plan (“CBP”).<sup>17</sup>

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<sup>14</sup> In addition, CD services were effective and responsive in addressing community needs in three MMSAs and two States.

<sup>15</sup> See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

<sup>16</sup> *Comptroller’s Licensing Manual*, “Public Notice and Comments” (April 2022) at 11.

<sup>17</sup> These commenters suggested terms for a proposed CBP, including: (i) increasing lending commitments to minority borrowers and small businesses and creating new lending products to better reach and serve these borrowers; (ii) creating funds for investment and charitable purposes to support CD projects; (iii) committing a percentage of earnings to donations in the Bank’s CRA assessment areas; (iv) pledging specific management and board diversity levels; and (v) committing to certain policy positions. Neither the CRA, its implementing regulations, nor the agencies’ joint proposal to strengthen and modernize those regulations requires banks to enter

BMO announced on November 28, 2022, a CBP of more than \$40 billion, with over \$16 billion of the plan commitment targeted for the State of California. According to BMO, the CBP focuses commitments to local communities across BMO's expanded footprint in the United States, with focuses on advancing home ownership, growing small business, strengthening communities, and creating a more equitable society.<sup>18</sup>

#### **IV. Public Comments and Analysis**

##### **A. Summary of Public Comments and Analysis**

Many of the written comments received and some testimony presented at the Public Meeting supported the merger. Commenters supporting the merger generally relied on their experiences as customers of BHBNA or as recipients of BHBNA's grant programs and specifically cited, for example:

- BHBNA's efforts to understand customers' and grant recipients' businesses or organizations and provide hands-on practical advice and guidance;
- BHBNA's work in helping customers obtain Paycheck Protection Program loans, as well as loan modifications and financial support BHBNA provided to customers during the COVID-19 pandemic;
- BHBNA's extensive charitable donations to non-profit organizations and efforts by BHBNA to work with community organizations to identify grant recipients. Non-profit organization commenters also highlighted volunteer work by BHBNA management and employees within their organizations and the value of advice, guidance, and networking BHBNA management and employees provided while serving on the commenters' boards of directors;
- BHBNA's record of employee retention, resulting in customers forming long-term relationships with their loan or account officers; and
- BHBNA's record of customer service.<sup>19</sup>

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into agreements with community groups or other private parties. *See* Community Reinvestment Act, 87 Fed. Reg. 33884 (proposed June 3, 2022).

<sup>18</sup> *See generally* 12 USC 1828(c) and 12 USC 2901 *et seq.* Although under the CRA, the OCC evaluates a bank's record of meeting the credit needs of its entire community, neither the CRA nor the BMA requires that a bank engage in any particular type of activity or to enter agreements with third parties. The OCC does not monitor compliance with nor enforce these agreements. *See* "Interagency Questions and Answers Regarding Community Reinvestment," 81 Fed. Reg. 48506 (July 25, 2016) (Q&A § \_\_.29(b)—2).

<sup>19</sup> The OCC is aware that BHBNA requested support from grantees but believes that the range of comments received, as well as the testimony presented at the Public Meeting, reflect a balance of views. The OCC has carefully considered all comments, including the concerns raised by commenters opposing the merger.



Commenters opposing the merger stated that BHBNA has not established that it will meet the convenience and needs of the communities affected by the merger<sup>20</sup> and specifically raised concerns with the following:<sup>21</sup>

- Alleged disparities in mortgage applications from, originations to, and denial of minority and LMI borrowers and borrowers in LMI neighborhoods, as compared to peer depository institutions;
- The percentage of small business lending to businesses with revenue under \$1 million;
- Consumer complaints in the Consumer Financial Protection Bureau’s complaint database regarding mortgage servicing problems and potential violations of law;
- Overdraft fees and policies;
- Financing of landlords with rental practices that contributed to displacement;
- Branch locations and closures; and
- Climate-related practices and policies.<sup>22</sup>

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<sup>20</sup> Some commenters also asserted that the OCC should only approve the merger if it finds a public benefit. The BMA requires the appropriate federal banking agency to consider the convenience and needs of the community in connection with its review of a BMA application, and as noted previously, the OCC considers the CRA performance of the filer and the probable effects of the business combination on the convenience and needs of the communities to be served in accordance with the BMA.

<sup>21</sup> Commenters also raised concerns about BOTW regarding the bank’s home mortgage lending, small business lending, branch actions over the past five years, and overdraft fee practices. BHBNA stated that BOTW participates in several programs promoting homeownership for LMI individuals and in LMI census tracts. Moreover, BHBNA noted BOTW’s relatively small mortgage lending volume overall in many of these areas. With regard to small business lending, BHBNA stated that BOTW offers a full suite of lending products to all of its small business customers. It further stated that the majority of BOTW’s branch consolidations and closures occurred in middle- or upper-income census tracts and majority White census tracts and that its branch closings were considered as part of its most recent CRA evaluation. BOTW’s most recent CRA PE, issued by the FDIC and dated September 21, 2020, gave BOTW an overall rating of “Outstanding” and concluded that “delivery systems are accessible to essentially all portions of the institution’s CRA assessment areas and that “to the extent changes have been made, the institution’s opening and closing of branches has not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals” (available at: [https://crapes.fdic.gov/publish/2020/3514\\_200921.PDF](https://crapes.fdic.gov/publish/2020/3514_200921.PDF)). Finally, BHBNA noted that if the Application is approved, it anticipates that current BOTW customers would transition to BHBNA’s non-sufficient funds and overdraft policies after systems conversion. BHBNA’s recent and expect changes in its overdraft policies and fees are discussed in the text of this section.

Commenters also expressed concern regarding BOTW’s CRA record of performance. As noted above, BOTW received an “Outstanding” rating in its most recent CRA PE. BOTW’s CRA record of performance informed the OCC’s convenience and needs analysis but was not considered in and of itself as a factor. *See* 12 CFR 5.33(e)(1)(iii)(A).

<sup>22</sup> Commenters also raised concerns with BMO’s and BNP Paribas’s lending to fossil fuel companies and urged the banks to adopt certain climate-related policies. In its public response, BMO detailed both BMO’s and BNP Paribas’

## Mortgage Lending

Commenters raised concerns about BHBNA's lending practices based on Home Mortgage Disclosure Act ("HMDA") data and the use of third-party analytics software. Specifically, commenters claimed that BHBNA underperforms industry peers in home mortgage lending to Black and Hispanic borrowers and exceeds industry peers in lending in majority White census tracts. Commenters noted disparities both in nationwide data and with respect to specific geographies and loan products.

The OCC notes that HMDA data alone are generally not adequate to provide a basis for concluding that an institution is engaged in lending discrimination, nor do they reflect the full range of an institution's lending activities and efforts. However, disparities in mortgage lending correlated with prohibited basis characteristics are of substantial concern to the OCC, and the OCC monitors HMDA data reported by the institutions it regulates, along with other data, to identify institutions that exhibit increased fair lending risk. BHBNA is subject to the OCC's ongoing supervisory program to monitor fair lending risk and compliance with the Fair Housing Act and its implementing regulation.<sup>23</sup>

In response to these concerns, BHBNA represented that its fair lending program includes comprehensive policies and procedures, risk assessments, monitoring and testing, internal controls, training, and a customer complaint management and response process. BHBNA also stated that its fair lending program is subject to board and management oversight.

With respect to lending to LMI individuals and communities, BHBNA represented that it participates in over 100 programs promoting homeownership for LMI individuals and census tracts offered by local governments, non-profit organizations, and affordable housing agencies throughout its CRA assessment areas and that it continues to refine its home lending programs to meet the needs of the communities it serves.<sup>24</sup> Additionally, BHBNA stated that it funded a grant program to assist in down payments or closing costs for certain qualifying borrowers, introduced new products to assist homebuyers, and developed a CRA homebuyer specialist role internally to

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histories of and commitments to climate and biodiversity, and detailed BMO's climate-related investments and efforts.

<sup>23</sup> 42 USC 3601 *et seq.*; 24 CFR 100. BHBNA is subject to the Consumer Financial Protection Bureau's supervisory and enforcement authority with respect to the Equal Credit Opportunity Act. 15 USC 1691 *et seq.*; 12 CFR 1002.

<sup>24</sup> BHBNA's stated examples include various State housing finance agency programs, the Freddie Mac Home Possible Program, Neighborhood Home Loan Product, FHA loans, and down payment and closing costs assistance from the Federal Home Loan Bank of Chicago and other local nonprofit/housing agencies. BHBNA further represented that over the past few years, it introduced a number of new programs to assist homebuyers, including the Community Home Improvement Loan Program, Illinois Housing Development Authority SmartBuy Programs, homebuying programs for Deferred Action for Childhood Arrivals (DACA) recipients, expanded FHA guidelines, Freddie Mac BorrowSmart DPA program, and additional Federal Home Loan Bank down payment assistance programs. BHBNA also offers loan products that can be used for homeowner repairs, including cash out refinance mortgages and a Community Home Improvement Loan, which is a home equity loan between \$5,000 and \$15,000, with expanded criteria, including up to 100 percent combined loan-to-value, for in footprint customers in LMI and majority minority census tracts who are in need of funds for home improvements.

discuss affordable homebuying options with customers and to follow up with customers that have been prequalified for a home purchase. BHBNA also represented that it hired in-market mortgage bankers focused on LMI communities and communities of color; has CRA relationship managers in major markets that work with non-profits, realtors, and housing agencies to increase referrals of LMI and minority applicants; and instituted an internal referral system and operations second review process for any proposed denials for LMI or minority borrowers.<sup>25</sup> BHBNA also noted that it enhanced the Bank's marketing materials to highlight an expanded product suite that permits lower credit scores and higher loan-to-value ratios.

BHBNA also represented that it has a community reinvestment outreach team that is focused on the Bank's support of LMI clients and communities, and that the team works with community partners and local governments to develop programs, initiatives, and opportunities to support LMI communities. BHBNA stated that the team also works to ensure BHBNA branch staff and mortgage bankers have been trained on the programs and tools available to support LMI borrowers. For example, if a BHBNA mortgage banker or a BHBNA CRA homebuyer specialist is working with an applicant that is going to be denied due to credit issues, they will let the customer know that the bank can connect them with non-profit or HUD-approved counseling agencies to help increase positive outcomes. BHBNA further represented that it plans to pursue more formal partnerships with counseling agencies throughout the Bank's footprint.

Finally, in response to commenters' suggestions on steps BHBNA should take to increase protections for borrowers from foreclosures, BHBNA represented that its foreclosure process involves providing delinquent borrowers with letters outlining loss mitigation options available to them and providing recommendations and instructions for borrowers to contact a certified housing counselor. BHBNA also encourages borrowers to apply for the bank's own loss mitigation and external mortgage relief programs, as applicable. An example of such an external program is the California Mortgage Relief Program.

### Small Business Lending

Commenters, including those opposing the Proposed Transaction, positively commented on BHBNA's record of lending to small businesses in LMI neighborhoods. One commenter that generally opposed the merger commended BHBNA for establishing a special purpose credit program<sup>26</sup> for small businesses and for announcing a commitment to underserved businesses. Commenters supporting the merger also noted examples of BHBNA's support for their small

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<sup>25</sup> In response to a concern from a commenter about BHBNA's reconsideration of low appraisal values for homes in majority Black neighborhoods, BHBNA represented that it works to eliminate inappropriate bias in its mortgage review process, such as by using separate staff from those who are working on the underwriting team to review appraisals for appropriateness, utilizing an automated appraisal review software to provide a check on the appraisal process, and using independent appraisal management companies that have staff with a history of completing appraisals in a specific local market.

<sup>26</sup> See 12 CFR 1002.8. Neither the OCC nor the Consumer Financial Protection Bureau determine whether a program qualifies for special purpose credit status. "Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B" (Feb. 22, 2022), available at <https://occ.gov/news-issuances/bulletins/2022/bulletin-2022-3a.pdf>.

businesses through financial products and advice, as well as BHBNA's support of non-profits and financial education programs that assist small business owners.

However, commenters expressed concern that BHBNA's small business lending has been focused on larger companies, especially in California. Commenters requested that BHBNA commit to increasing the share of its small business lending to businesses that have less than \$1 million in revenue and to decreasing the share of small business lending through credit cards. Commenters expressed concern that small business credit cards may have higher interest rates than traditional loan products.

BHBNA cited its small business focused special purpose credit programs to Black, Hispanic, and women-owned businesses as an example of its dedication to reaching small business consumers. BHBNA explained that these programs offer lines of credit up to \$50,000 through expanded underwriting criteria and favorable pricing and noted that BHBNA conducts outreach along with non-profits in LMI communities that provide financial education and networking. Additionally, BHBNA indicates that these programs will be expanded to BOTW locations after consummation of the proposed merger.

### Consumer Complaints

Some comments also mentioned that the Consumer Financial Protection Bureau's complaint database contained complaints against BHBNA related to mortgage lending, citing to three specific complaints as examples.<sup>27</sup> BHBNA noted that the comments did not appear to express specific concerns about BHBNA's complaint management process and stated that it is committed to making its credit products and services available to all customers on a fair and equitable basis, in compliance with the letter and spirit of fair lending laws and regulations. BHBNA provided an overview of its complaint management process, noting that complaint data is reviewed regularly and discussed in management committees.

### Overdraft Practices

One comment letter signed by several organizations positively acknowledged changes BHBNA has made to its overdraft policies and to reduce overdraft fees but stated that the Bank's \$36 per overdraft fee is high and requested that it consider ending or capping its overdraft fees at \$10 per overdraft, in line with certain other banks. BHBNA responded by detailing the significant changes it has made to its overdraft programs since November 2021. For example, BHBNA noted it had announced on June 30, 2022, that it was eliminating non-sufficient funds fees, overdraft transfer fees, and certain consecutive day overdraft fees, and significantly reducing overdraft fees to \$15 per occurrence. BHBNA explained that these changes apply to both consumer and small business banking accounts and that it clarified its overdraft services brochure and overdraft information on its website. BHBNA also noted that in November 2021, it had reduced the number of overdraft or non-sufficient funds charges a customer may incur to three per day, and that it eliminated consecutive day overdraft fees for accounts that remain

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<sup>27</sup> See <https://www.consumerfinance.gov/data-research/consumer-complaints/>.

overdrawn for an extended period. BHBNA anticipates that current BOTW customers will transition to BHBNA's non-sufficient funds and overdraft policies.<sup>28</sup>

### Branches

Commenters acknowledged that the merger does not present business overlap concerns that would lead to branch closures. However, several commenters expressed concerns about the number of branches that both BHBNA and BOTW have closed over the past several years. Commenters also expressed concerns alleging that BHBNA has closed more branches in majority non-White and LMI neighborhoods than in majority White and middle or upper-income neighborhoods and that BHBNA's distribution of branches underserves certain majority Black neighborhoods. BHBNA stated that it does not expect to close any BOTW branch in connection with the proposed merger.

Additionally, in response to the commenters, BHBNA represented that a significant majority of BHBNA's branch consolidations and closures from January 2017 to December 2021 occurred in middle- or upper-income and majority White census tracts. BHBNA further stated that under its branch closing policies, it conducts (and will continue to conduct) enhanced analyses of the impact of a specific branch action on LMI and majority non-White census tracts that include reviews by the Bank's CRA, fair lending, and responsible banking teams. BHBNA noted that its branch actions were reviewed as part of its most recent CRA evaluation. The 2020 PE concluded for each State and each MMSA that BHBNA's branches and alternative delivery systems were accessible to geographies and individuals of different incomes and responsive in helping the Bank provide services across the community. When looking at MMSAs and States where BHBNA had opened or closed branches, the PE concluded that BHBNA's opening and closing of branches had not adversely affected the accessibility of its delivery systems, particularly in LMI geographies and/or to LMI individuals. The OCC will continue to evaluate the accessibility of the combined institution's retail delivery services in census tracts of various income levels as part of its CRA PEs.

### Multifamily Mortgage Lending

One comment letter signed by several organizations expressed concern that BOTW's multifamily loan originations to certain landlords have indirectly caused displacement. These commenters expressed concern that the landlords receiving financing had unlawfully evicted families or unduly raised rents to unaffordable levels. In response, BHBNA represented that its principles of credit risk management include due diligence on the loan applicant's and related parties' reputation and integrity. BHBNA represented that it also considers factors such as ethics, community responsibility, and avoidance of conflicts of interest as part of its credit risk management process.

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<sup>28</sup> BHBNA also represented that it offers a number of low-cost and free products and tools that help clients to budget, save, and borrow carefully and confidently, and that these would continue at all branch locations after the consummation of the proposed merger. BHBNA cited, for example, its BankOn Certified Account that includes low costs, no overdraft fees, and transaction capabilities, such as a debit or prepaid card and online bill pay.

## **B. Requests for Extension of Comment Period and Public Hearing**

Opposing commentors also requested the OCC and FRB hold public hearings in California. In response, the OCC and FRB held a virtual<sup>29</sup> public meeting regarding the Application on July 14, 2022, as detailed above.<sup>30</sup> The panel of OCC and FRB representatives received oral testimony from a variety of community group representatives and individuals, expressing both support for and opposition to the proposed merger.

Opposing commentors also requested that the OCC extend the comment period to ensure all impacted communities have a meaningful opportunity to provide comments to inform regulator deliberations.<sup>31</sup> After careful consideration, the OCC determined it was appropriate to extend the comment period through 5:00 PM Eastern Daylight Time on July 19, 2022, in connection with the Public Meeting.

## **C. Summary of Consideration of Public Comments**

The OCC has considered all of the facts of record, including BHBNA's CRA record of performance, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by BHBNA, and the public comments on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

## **VII. Consummation Requirements**

Please advise OCC Large Bank Licensing in writing ten (10) days in advance of the desired effective date for the Bank Merger, so it may issue the necessary certification letter. The effective date must follow any other required regulatory approval, as applicable. The OCC will issue a letter certifying consummation of the transaction when we receive documentation that all other regulatory approvals, non-objections, or waivers have been obtained, as applicable. If the merger transaction is not consummated within six months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This conditional 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

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<sup>29</sup> The meeting was held virtually to protect the health and safety of all participants in light of the ongoing COVID-19 pandemic.

<sup>30</sup> See 12 CFR 5.11(i).

<sup>31</sup> The OCC may extend a comment period if a person requesting additional time satisfactorily demonstrates that additional time is necessary to develop factual information that the OCC determines is needed for the filing, or the OCC determines that other extenuating circumstances exist. See 12 CFR 5.10(b)(2)(ii), (iii).

regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Our approval is based on Bank representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind this conditional approval 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.

A separate letter is enclosed requesting your feedback on how we handled the Application. We would appreciate your response so we may improve our service. Please include the OCC control number on any correspondence related to this filing. If you have any questions, please contact Senior Licensing Analyst Patricia Roberts at (202) 768-1070 or [patricia.roberts@occ.treas.gov](mailto:patricia.roberts@occ.treas.gov), or Director for Large Bank Licensing Jason Almonte at (917) 344-3405 or by email at [jason.almonte@occ.treas.gov](mailto:jason.almonte@occ.treas.gov).

Sincerely,

Stephen A. Lybarger  
Deputy Comptroller for Licensing