CRA Decision #197
July 2019

June 20, 2019

Spencer A. Sloan
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Re: Applications by TCF National Bank, Sioux Falls, South Dakota to acquire Chemical Bank, Detroit, Michigan and to seek full fiduciary trust powers
OCC Control Nos.: 2019-CE-Combination-308014, 2019-CE-Fiduciary-308085

Dear Mr. Sloan:

The Office of the Comptroller of the Currency (OCC) hereby approves TCF National Bank's application to merge Chemical Bank with and into TCF National Bank (TCF NB, Bank) and to exercise full fiduciary powers. TCF NB is authorized to retain its own main office as the main office of the resulting bank and to retain and operate as branches its existing branches and the branches of Chemical Bank. The OCC also approves TCF NB's retention of subsidiaries and investments of Chemical Bank, as further discussed below. This approval is granted based on a thorough review of all information available to the OCC, including commitments and representations made in the application, and during the application process.

I. Background and the Transaction

TCF NB is a $23.7 billion national bank headquartered in Sioux Falls, South Dakota and operates 314 branches in Minnesota, Michigan, Colorado, Wisconsin, Arizona, Illinois and South Dakota. TCF NB is a wholly-owned subsidiary of TCF Financial Corporation, a Minnesota corporation and a registered bank holding company.

Chemical Bank is a $21.5 billion state-member bank headquartered in Detroit, Michigan and operates 212 branches in Michigan, Ohio and Indiana. Chemical Bank is a wholly-owned subsidiary of Chemical Financial Corporation, Detroit, Michigan, a registered financial holding company.

Chemical Financial Corporation submitted an application with the Federal Reserve Bank of Chicago to acquire TCF Financial Corporation, pursuant to an Agreement and Plan of Merger by and between Chemical Financial Corporation and TCF Financial Corporation (Merger Agreement), dated January 27, 2019. Pursuant to the Merger Agreement, TCF Financial Corporation will merge with and into Chemical Financial Corporation, with Chemical Financial Corporation being the surviving company. Post-merger, Chemical Financial Corporation will change its name to TCF Financial Corporation and TCF NB will become a wholly-owned subsidiary thereof. Following the consummation of the bank holding company merger, Chemical Bank will merge with and into TCF NB, with TCF NB continuing as the surviving institution.

The OCC received comments from two parties and the Board of Governors of the Federal Reserve System (FRB) received comments from three parties regarding the proposed merger. The OCC carefully considered the concerns of the commenters as they related to the statutory and regulatory factors considered by the OCC in acting on the merger application, including performance under the Community Reinvestment Act (CRA), and the probable effects of the merger on the convenience and needs of the communities to be served. The public comments are discussed under the Public Comments and Analysis section below.

II. Legal Authority

The OCC reviewed the proposed merger transaction under the criteria of the Bank Merger Act (BMA), 12 USC 1828(c), the Riegle-Neal Act, 12 USC 1831u, the National Bank and Consolidation and Merger Act, 12 USC 215a and 215a-1, and applicable OCC regulations and policies.

The BMA requires the OCC to consider, among other matters, whether the proposed transaction would have significant anticompetitive effects. The agency must also consider the financial and managerial resources of the banks, their future prospects, their effectiveness in combating money laundering activities, the convenience and needs of the communities to be served and the risk of the transaction to the stability of the United States banking or financial system. In addition, under the BMA, the OCC may not approve a merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. The OCC considered these factors and found them consistent with approval.

Furthermore, 12 USC 2903(a)(2) requires the OCC to take into account the institutions' records of compliance with the CRA. As explained in section III below, the OCC considered this factor and found it consistent with approval.

In addition, the merger is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 USC 215a-1 and 1831u(a), and the resulting bank is authorized to retain and operate offices of both banks under 12 USC 36(d) and 1831u(d)(1). The OCC also approves the Bank's proposal to conduct full fiduciary powers pursuant to 12 USC 92a. This approval constitutes a permit pursuant to 12 CFR 5.26(e)(4), to conduct the fiduciary powers requested in the application.

Furthermore, 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). TCF NB seeks to retain Chemical Bank's subsidiaries. Based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, the OCC concludes that the activities are legally permissible[1] and the operating subsidiaries meet the requirements set forth in 12 CFR 5.34(e)(2). The Bank has also provided the information required by 12 CFR 5.39(i) and is therefore approved to acquire the financial subsidiaries and conduct the activities thereof.[2]

Finally, the Bank seeks approval to acquire and assume investments from Chemical Bank pursuant to 12 USC 24(Eleventh) and 12 CFR 24 concerning national bank community and economic development entities, community development projects, and other public welfare investments (PWIs). Specifically, the Bank is seeking approval to acquire and assume Chemical Bank's public welfare investment (PWI) portfolio consisting of 40 investments in community and economic development entities (CEDEs) with an aggregate value of $89.1 million, as of March 31, 2019.[3] The Bank stated that these investments are structured to shield the Bank from unlimited liability. The Bank informed the OCC that, including the Chemical Bank's PWI portfolio, the Bank's aggregate PWIs will be 4.4 percent of its capital and surplus upon consummation of the merger.

The portfolio includes 20 investments in CEDEs that have received allocations of Low Income Housing Tax Credits (LIHTCs) or New Markets Tax Credits (NMTCs) with an aggregate value of $75.9 million and 20 investments that involve Federal Historic Tax Credits and Ohio Historic Preservation Tax Credits with an aggregate value of $13.2 million. A bank's investment in projects that use LIHTCs and NMTCs are specific examples of qualified PWIs under 12 CFR 24.6 and thus, the investments are permissible under 12 USC 24(Eleventh) and 12 CFR 24. Based on information provided by TCF NB and Chemical Bank, the OCC determined that each of the 20 federal and state historic tax credit investments would qualify as a PWI pursuant to 12 USC 24(Eleventh) and 12 CFR 24.[4]

III. Community Reinvestment Act and Convenience and Needs

In evaluating this proposed transaction, the OCC has carefully considered (i) TCF NB and Chemical Bank's most recent CRA performance evaluations (PE), (ii) information available to the OCC as a result of its supervisory responsibilities, (iii) written public comments, and (iv) information provided by TCF NB and Chemical Bank in response to public comments.

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[1] 12 USC 24(Seventh), 12 USC 29; 12 CFR 5.34(e)(5)(v)(A), (B), (C), and (FF), and 12 CFR Part 9.
[2] 12 CFR 5.39(e)(1)(ii).
[3] The investments are located in Michigan and Ohio.
[4] Based on information provided by TCF NB and Chemical Bank, the investments are designed to promote the public welfare, consistent with 12 CFR 24.3, by primarily benefitting low- and moderate-income (LMI) individuals, LMI areas, areas targeted by a government entity for redevelopment, or the investments would receive consideration as a "qualified investment" under 12 CFR 25.23 of the CRA.

A. Community Reinvestment Act

The 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 LMI neighborhoods, when evaluating applications under the BMA. Under the regulations implementing the CRA, a bank's record of performance may be the basis for denying or conditioning approval of an application subject to the BMA. 12 CFR 25.29(d). Accordingly, the OCC considered the CRA PE of each bank involved in this transaction. Based on the review, the OCC has concluded that the banks' records of performance under the CRA are consistent with approval of this application.

1. TCF National Bank's CRA Performance

In its most recent CRA PE dated December 31, 2016,[5] TCF NB received an overall rating of "Outstanding." The lending test was rated "Outstanding" and the service and investment tests were rated "High Satisfactory." The major factors supporting the rating include: (i) good lending activity; (ii) excellent geographic distribution of lending; (iii) excellent distribution of lending by borrower income level; (iv) the level of community development (CD) lending, which had a positive impact on the lending test and reflected a CD activity level that was responsive to credit needs in the bank's assessment areas (AA); (v) good level of qualified investments, which were responsive to community needs and included activities that served broader areas; (vi) branch accessibility to all portions of individual rating areas, with good hours; and (vii) adequate levels of CD services.

2. Chemical Bank's CRA Performance

In its most recent CRA PE dated September 18, 2017,[6] Chemical Bank received an overall rating of "Satisfactory." The lending and investment tests were rated "High Satisfactory" and service test was rated "Low Satisfactory." Major factors supporting the rating include: (i) in connection with the lending test — (a) a substantial majority of loans made within the bank's AA, (b) the geographic distribution of loans reflected good penetration throughout the combined AA, (c) the distribution of borrowers reflected good penetration of lending to businesses of different sizes and good penetration among borrowers of different income levels, (d) a good record of serving the credit needs of low-income individuals and areas and very small businesses, (e) the bank was a leader in making CD loans, and (f) the bank made use of innovative and/or flexible lending practices in serving AA credit needs; (ii) in connection with the investment test — (a) significant levels of qualified CD investments and grants, particularly those not routinely provided by private investors, (b) significant use of innovative and/or complex investments to

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[5] The evaluation period for the retail portion of the Lending Test was January 1, 2012 through December 31, 2016. The evaluation period for qualified community development loans and the investment and service tests was January 1, 2012 through August 6, 2017. A copy of the CRA PE is available at https://www.occ.gov/static/cra/craeval/mar19/23253.pdf.

[6] The review period for the lending activity was January 1, 2015 through December 31, 2016. For qualified investments, grants, donations and community development activities, the review period was October 27, 2015 through September 18, 2017. A copy of the CRA PE is available at https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRatingResult#20170918.

support CD initiatives, and (c) investments and grants that exhibited excellent responsiveness to credit and CD needs; and (iii) in connection with the service test — (a) delivery systems that were reasonably accessible to the bank's geographies and individuals of different income levels, (b) services that did not vary in a way that inconvenienced the needs of the bank's AAs, particularly LMI geographies and individuals, and (c) relatively high levels of CD services.

B. Convenience and Needs

Under the BMA, the OCC considers the convenience and needs of the communities to be served by the resulting bank.[7] Though the bank's CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (November 2017), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis. The OCC has concluded that approval of this transaction is consistent with the convenience and needs of the communities that the resulting bank will serve.

IV. Public Comments and Analysis

A. Summary of Public Comments and Applicant's Response

The OCC received two public comment letters concerning the proposed transaction. Collectively, both commenters, citing Home Mortgage Disclosure Act (HMDA) data, raised concerns regarding Chemical Bank's lending to minority and LMI borrowers in the Detroit AA.[8] One of the commenters also expressed concerns about Chemical Bank's lending in the Cleveland AA.[9] Additionally, one of the commenters expressed general concerns regarding TCF NB's level of CD lending and investments, both banks' level of small business lending, and the resulting institution's branching footprint in majority-minority census tracts. One commenter requested that the OCC require the resulting institution to enter into a community benefits plan in connection with the transaction.[10] The second commenter requested that the OCC conduct public hearings regarding the proposed transaction.[11]

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[7] See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).
[8] Though the commenters refer to the area as the "Detroit Assessment Area", for purposes of the CRA, the AA is defined as the Detroit-Dearborn-Livonia Metropolitan Division (MD) AA.
[9] Though the commenter refers to the area as the "Cleveland Assessment Area", for purposes of the CRA, the AA is defined as the Cleveland-Elyria Metropolitan Statistical Area (MSA) AA. Also, the same commenter praised TCF NB's performance in lending to minority borrowers in the "Detroit Assessment Area", the "Milwaukee Assessment Area", the "Minneapolis-St. Paul Assessment Area" and the "Chicago Assessment Area'.
[10] Neither the BMA nor the CRA require applicants to submit a community benefits plan as part of the application. See generally 12 USC 1828(c) and 12 USC 2901 et seq.
[11] This commenter also expressed concern regarding the existence of shareholder litigation against TCF Financial Corporation, alleging violation of securities laws. Commenter concerns regarding shareholder litigation are considered by the Federal Reserve and are beyond the OCC's review authority.

In their joint response to the commenters' concerns, TCF NB and Chemical Bank represented that they are committed to evaluate and merge the Compliance, Fair Lending, and Unfair, Deceptive, or Abusive Acts or Practices programs of both institutions in a manner that will adopt the best practices from each bank's processes, policies, and procedures. The response represented that TCF NB and Chemical Bank aim to have a compliance program that further enhances their current programs. TCF NB and Chemical Bank detailed their records of lending to, investing in, and serving the needs of the community, as well as the current state of their compliance programs. The parties provided responses to the specific concerns raised by the commenters, which are addressed in the analysis below.

B. Analysis

Home Mortgage Lending

As noted above, the commenters expressed concerns regarding TCF NB and Chemical Bank's home mortgage lending activities. Disparities in mortgage lending that are correlated with prohibited basis characteristics are of concern to the OCC and the OCC monitors HMDA data reported by the institutions it regulates to determine those institutions that exhibit heightened risk. The OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data for the period in question do not take into consideration borrower creditworthiness, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of an institution's lending activities and efforts.[12]

The OCC also considers banks' HMDA data in the context of CRA evaluations. With regard to Chemical Bank's performance in the Detroit-Dearborn-Livonia MD AA, the FDIC concluded in Chemical Bank's CRA PE that the bank's geographic distribution of loans reflected excellent penetration throughout the AA and distribution amongst borrowers reflected adequate penetration amongst customers of different income levels and business sizes. The CRA PE further characterized Chemical Bank's lending as exhibiting a good record of service in meeting the credit needs of low-income individuals and areas. Regarding the Cleveland-Elyria MSA AA, the FDIC concluded that Chemical Bank's lending levels reflected good responsiveness to AA credit needs and the geographic distribution of loans reflected good penetration throughout the AA, with excellent penetration amongst customers of different income levels and businesses of different sizes. The CRA PE further characterized Chemical Bank's lending as exhibiting an adequate record of serving the credit needs of low-income individuals and areas.

In connection with home mortgage lending, TCF NB and Chemical Bank represented in their application that the core competencies of TCF NB and Chemical Bank are complementary and will strengthen through the merger. Specifically, TCF NB represented that it offers strong retail

[12] This applies to the HMDA data collected during the timeframe mentioned in the public comment. HMDA data collected beginning in 2018 will include information on some of these variables for lenders that made 500 or more closed-end mortgage loans or 500 or more open-end lines of credit in at least one of the two preceding calendar years.

digital banking delivery systems, commercial finance lending, and nationwide home equity lines of credit that will complement Chemical Bank's existing multi-family and single-family mortgage lending.[13] Further, the banks' joint response provided additional context regarding Chemical Bank's fair lending compliance program and stated that Chemical Bank has historically placed the highest priority on strict compliance with fair lending laws and regulations and has maintained an excellent fair lending compliance record. Chemical Bank represented that its Fair Lending & Responsible Banking Compliance Program identifies and manages fair lending risks through governance, controls and testing, and risk escalation. Chemical Bank stated that it monitors the distribution of applications and loans by the racial composition of the census tracts in the high-minority areas to identify lending patterns. Chemical Bank also explained that it created fair lending initiatives, as needed, to ensure the bank remains focused on increasing lending to minority borrowers and in minority tracts through increased CRA activities, branch distribution, and a designated Fair Lending Marketing Plan that ensures additional marketing is conducted in minority areas within Chemical Bank's AAs.[14]

CD Lending & Investments

TCF NB stated that since August 2017, the bank has added $114 million in CD loans in the bank's AAs, and an additional $88 million in CD loans benefitting the broader regional and national areas outside its AAs. TCF NB also invested more than $117 million in various affordable housing bonds, low-income housing tax credits and other equity equivalent investments within its AAs since that time. TCF NB further stated that it continually reviews and assesses its performance related to CD lending and investment, and intends to continue this practice following the merger to further enhance and reinforce its outreach efforts and key program components, to ensure the bank is meeting the credit needs of the communities in which it operates.

Small Business Lending

TCF NB represented that since its 2016 CRA PE, it has originated 878 CRA/small business loans, including to businesses located in LMI communities. Chemical Bank represented it has originated 180 small business loans within LMI communities (in the Detroit and Cleveland AAs) for a total of $64.3 million since its 2017 CRA PE. TCF NB and Chemical Bank also represented in their application that Chemical Bank's strengths in corporate deposit relationships, in-market relationship commercial banking, tax credit lending services, and small business and agricultural lending through Small Business Administration and U.S. Department of Agriculture eligible loans will complement TCF NB's existing commercial capabilities.

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[13] Chemical Bank's most recent CRA PE highlighted that the bank made 28,863 HMDA reportable loans totaling $5.4 billion, which represented a 107.7 percent increase over the prior review period. The CRA PE also highlighted that "[i]n many instances, the bank outperformed the aggregate lenders in lending to low- and moderate-income borrowers..." Chemical Bank CRA PE at 13.
[14] For example, Chemical Bank represented that, in 2018, the bank conducted over 2,836 community outreach service events and activities related to affordable housing and economic development (with 745, or 26% conducted in high-minority census tracts). The Fair Lending Marketing Plan resulted in 123 campaigns and advertisements specific to high-minority communities or in minority-owned publications within Chemical Bank's CRA AAs.

<u>Branching</u>

TCF NB represented that it expects that the combined organization will have 74 branches, or approximately 14% of the pro forma branch network, in majority-minority census tracts. Both institutions explained that they are committed to growing and operating in both LMI and minority communities, and pointed to the decision to keep the combined organization headquartered in the City of Detroit. Since announcement of the merger, both TCF NB and Chemical Bank represented that they independently conducted over 250 outreach calls to local community partners throughout their respective footprint and held listening sessions that were designed to better understand the needs of the communities they serve, gain feedback on the banks' products, services and programs, and explore where different communities may have resource gaps that are negatively impacting neighborhood stabilization and revitalization. The banks further represented that they intend to incorporate this feedback into efforts to develop and deliver on strategic initiatives and partnerships vital to the communities the resulting institution will serve.

C. Request for Public Hearing

One 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.

The OCC has reviewed the public comment that was submitted and is not aware of any reason why the written comment is insufficient or why a public hearing would be in the public interest. Accordingly, the OCC has determined not to hold a public hearing.

V. Summary of Consideration of Public Comments

The OCC has considered all of the facts of record, including the records of the relevant deposit institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by TCF NB and Chemical Bank, and the public comments on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

VI. Consummation Requirements

A. Fiduciary Powers

The OCC must approve any trust management change the Bank makes prior to commencing fiduciary activities, and the Bank must notify the Central District Licensing office in writing within 10 days after commencing trust activities. The board of directors must provide for the establishment and administration of the trust department (or fiduciary operation) either through the adoption of amendments to the bylaws or by appropriate resolutions. You will note that 12 CFR 9.4 places responsibility on the board of directors for the proper exercise of the Bank's fiduciary powers. However, the board may decide whether it shall supervise the administration of all such powers directly or assign any function related to such powers to any director, officer, employee, or committee.

The board should also provide:

- A proper delineation of duties for trust officer(s) and committee(s).
- Adherence to the self-dealing and conflicts of interest provisions under 12 CFR 9.12.
- The designation of the officers or employees responsible for custody of the trust investments in conformity with 12 CFR 9.13(a).

The establishment and administration of the trust department may appear in the bylaws or in the board resolutions, or partly in the bylaws and partly in the resolutions. After adoption, a copy of those provisions should be furnished to the trust officer(s) for guidance.

Booklets of the Comptroller's Handbook pertaining to asset management are available for download at OCC.gov. The trust officers and staff should become thoroughly familiar with "Fiduciary Activities of National Banks" at 12 CFR 9.

The trust activities should begin within 18 months of this approval, unless we grant an extension, and the Bank should notify the OCC in writing within 10 days after beginning those activities. If the Bank decides to surrender its fiduciary powers, it must notify the OCC in accordance with 12 CFR 9.17(a).

B. Merger

If the Bank is subject to 12 CFR 11, the Bank should submit any required preliminary proxy materials or information statement to the OCC's Bank Advisory group, Washington, DC. Otherwise, the Bank should submit definitive copies of the proxy materials or information statement to the appropriate district office at the same time they are distributed to the shareholders. The Central District Licensing office must be advised in writing at least 10 days in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval.

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

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.

- Amended Articles of Association, with a Secretary's Certificate certifying the required shareholder approval was obtained.

- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.

- Documentation that all other conditions that the OCC imposed have been met.

If the merger is not consummated within six months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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

A separate letter is enclosed requesting your feedback on how we handled the referenced applications. We would appreciate your response so we may improve our service. Please include the OCC control numbers on any correspondence related to this filing. If you have any questions, contact Senior Licensing Analyst Yoo Jin Na at (202) 649-6335 or yoojin.na@occ.treas.gov.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing