



Comptroller of the Currency
Administrator of National Banks

Licensing Department
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Corporate Decision #2011-10
July 2011

June 20, 2011

Andrew Karp
Associate General Counsel
Harris National Association
111 W. Monroe Street
Chicago, Illinois 60603

Re: Applications to convert M&I Bank F.S.B., Las Vegas, Nevada, to a National Bank and to merge the converted bank as well as M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin, and The Harris Bank National Association, Scottsdale, Arizona into Harris National Association, Chicago, Illinois; and related notices.

Dear Mr. Karp:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the conversion and merger applications for the reasons and subject to the requirements set forth herein. In addition, as discussed below, the OCC: (1) approves the retention by the resulting bank, Harris National Association, Chicago, Illinois, following the conversion and merger, of the branches and main offices of the target banks, as well as the retention of operating subsidiaries, community development corporations, and investments held by the target banks; (2) grants director residency waivers sought in connection with these applications; and (3) does not disapprove the change in control of Marshall & Ilsley Trust Company, National Association, Milwaukee, Wisconsin. These approvals are granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made by the applicants’ representatives during the application process. This approval is also subject to the representations and requirements set out herein.

I. INTRODUCTION

On February 4, 2011, Harris National Association, Chicago, Illinois (“Harris”) filed applications with the OCC to acquire by merger: a state bank, M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin (“M&I State Bank”); a new national bank, M&I Bank National Association, Las Vegas, Nevada (“M&INA”); and The Harris Bank National Association, Scottsdale, Arizona (“THBNA”)(together referred to as “targets”). M&INA would be created as a result of the charter conversion of M&I Bank, F.S.B., Las Vegas, Nevada, a federal savings bank (“M&I

FSB”), which also on February 4, 2011 filed an application with the OCC seeking approval for the charter conversion. The proposed interstate merger would be undertaken pursuant to 12 U.S.C. §§ 215a-1, 1831u, and 1818(c). Each of these depository institutions is or, in the case of M&INA, will be insured by the Federal Deposit Insurance Corporation.

Marshall & Ilsley Corporation (“M&IHC”), a Wisconsin bank holding company, owns M&I State Bank, M&I FSB, and Marshall & Ilsley Trust Company National Association, Milwaukee, Wisconsin (“M&I Trust”). Harris and THBNA are wholly-owned subsidiaries of Harris Bankcorp, Inc. (“HBI”); which is a wholly-owned subsidiary of Harris Financial Corporation (“HFC”). HFC is a wholly-owned subsidiary of Bank of Montreal (“BMO”).¹

Harris has branches in Illinois, Indiana, and Wisconsin. M&I State Bank has branches in Wisconsin, Arizona, Florida, Kansas, Illinois, Indiana, Minnesota, and Missouri.² At the time of M&I FSB’s charter conversion, M&I FSB will have its home office in Nevada with branches in Minnesota and Wisconsin. Following the conversion, M&INA will retain M&I FSB’s home office as its main office, and all of the branches of M&I FSB.³ THBNA has branches in Arizona, Florida, and Washington. As part of the interstate merger under the Riegle-Neal Act,⁴ Harris has requested retention of its own main office as the main office of the resulting bank, of all main offices of the targets as branches of Harris, and the retention of all branches of all banks that are parties to the merger as branches of the resulting bank. At the time of the merger, Harris and all the targets will be affiliates.⁵

Following consummation of the proposed transactions, Harris also seeks to retain a number of subsidiaries and investments currently held by M&I State Bank and M&IFSB.

Additionally, on February 4, 2011, the OCC received a notice of change in bank control (“Notice”) of M&I Trust, by Merger Sub, a direct and wholly-owned subsidiary of HFC, as a

¹ BMO, HFC, HBI, and Mike Merger Sub, LLC (“Merger Sub”), a Delaware LLC and wholly owned subsidiary of HFC, submitted an application to the Federal Reserve Bank of Chicago to acquire Marshall & Ilsley Corporation (“M&IHC”) through a merger transaction whereby M&IHC will be merged with and into Merger Sub. HFC, HBI, and Merger Sub are bank holding companies for purposes of the Bank Holding Company Act and are financial holding companies under the Gramm-Leach-Bliley Act (“GLBA”). HBI and HFC are domestic financial holding companies; BMO is a Canadian Schedule I Bank under the Bank Act (Canada). Upon consummation of the parent merger, HFC will thereby acquire M&I State Bank, M&I FSB, and M&I Trust. Following the parent merger, M&I State Bank, M&INA, and THBNA will merge into Harris in an affiliated interstate merger transaction. The Federal Reserve Board approved the holding company transactions on June 20, 2011.

² In addition to these domestic branches, M&I State Bank maintains a foreign branch in the Cayman Islands under the authority of Regulation K, 12 C.F.R. § 211.3. Harris has also requested to retain M&I’s branch in the Cayman Islands.

³ Requests for waivers of directors’ residency requirements for all of the directors of M&INA were also filed with the OCC.

⁴ 12 U.S.C. § 1831u(a)(1).

⁵ See note 1, *supra*.

result of the holding company merger transaction.⁶ The change in control of M&I Trust will occur with the merger of M&IHC into Merger Sub, but prior to the Riegle-Neal interstate merger of the banks.⁷ M&I Trust will remain a separate charter and will not be part of the Riegle-Neal interstate merger of the banks.⁸

II. ANALYSIS

A. Conversion to National Bank

M&I FSB is authorized to convert from a federal savings bank to a national bank charter pursuant to regulations promulgated by both the OCC and Office of Thrift Supervision (“OTS”).⁹ M&INA is permitted to retain branches after the conversion pursuant to section 341 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁰

In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws.¹¹ The regulations further provide that a conversion application may be denied if a significant supervisory, Community Reinvestment Act (“CRA”),¹² or compliance concern exists with regard to the applicant; approval is inconsistent with applicable law, regulation, or OCC policy; or the applicant fails to provide necessary information that the

⁶ Notices of each of the proposed transactions were published in the Chicago Sun-Times, Milwaukee Journal Sentinel, Las Vegas Review Journal, and the Arizona Republic beginning on or about February 3, 2011.

⁷ See note 1, *supra*. Harris filed the change in control pursuant to the Change in Control Act, 12 U.S.C. § 1817(j), but later amended the Notice to clarify that the change in control was filed pursuant to 12 C.F.R. § 5.50. Since M&I Trust is an uninsured, non-deposit taking national trust bank, 12 U.S.C. § 1817(j) would be inapplicable. However, the OCC requires a filing per its regulation, 12 C.F.R. § 5.50.

⁸ M&I Trust will retain its subsidiary, North Star Trust Company, an Illinois state-chartered trust company.

⁹ 12 C.F.R. §§ 5.24 and 552.2-7. See also, 12 U.S.C. § 1464(i)(5). The OCC has approved numerous conversions of federal savings banks to national bank charters. See, e.g., Decision of the Applications by TCF Financial Corp. to convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin into National Banks (OCC Corporate Decision No. 97-113, February 24, 1997). Section 5.24(d)(2)(ii)(E) of the OCC’s regulations provides that the conversion of a federal savings bank must not be in contravention of federal law. Sections 552.2-7 and 563.22(b)(1)(ii) of the OTS regulations require either the filing of a notice or application to the OTS. M&I FSB filed a conversion application with the OTS. In a letter dated April 19, 2011, Regional Director, Daniel T. McKee, approved M&I FSB’s application to convert and provided additional instructions regarding the documentation that should be provided to the OTS upon conversion.

¹⁰ Pub. L. No. 111-203, 124 Stat. 1376 (2010) (“the Dodd-Frank Act”).

¹¹ 12 C.F.R. § 5.24(d).

¹² The CRA also requires that the OCC must consider a conversion applicant’s record of compliance with CRA in deciding the application. 12 U.S.C. § 2903(a)(2) and 2902(3)(A); 12 C.F.R. § 25.29(a)(4). See Part II, section E.2.

OCC has requested.¹³ Finally, the regulations provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.¹⁴

The OCC has conducted a thorough review of the conversion application in light of the factors set forth above and determined that the results of this review are consistent with approval of the conversion application.¹⁵

B. Branch Retention after Conversion

Upon the OCC's approval of the federal savings bank's conversion to a national bank, the resulting national bank, M&INA, may retain all of M&I FSB's branches operating in Wisconsin and Minnesota.

Pursuant to Section 341 of the recently enacted Dodd-Frank Act, codified at 12 U.S.C. § 5451, upon the OCC's approval of the M&I FSB's conversion to a national bank, M&INA may retain and operate all of M&I FSB's established branches. Section 5451 states:

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—

(1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank

This provision of the Dodd-Frank Act expands the pre-existing branch retention authorities of 12 U.S.C. § 1464(i)(5) and 12 U.S.C. § 36(c) in relation to certain federal savings

¹³ 12 C.F.R. § 5.13.

¹⁴ 12 C.F.R. § 5.24(d). Additionally, the Dodd-Frank Act, at section 612, contains provisions restricting charter conversions by depository institutions subject to cease and desist orders, other formal enforcement actions, and MOUs. However, the legislation does not apply to conversions of federal savings associations to national banks.

¹⁵ The OCC also has determined that consideration and approval of the conversion application is consistent with the standards set forth in the Statement on Regulatory Conversions issued by the Federal Financial Institutions Examination Council on July 1, 2009.

The OCC has also reviewed the requests for residency waivers for directors of M&INA. Under 12 U.S.C. § 72, the majority of the board of directors of a national bank must reside in the state in which the bank is located or within 100 miles of the location of the office of the association. The OCC has the authority to waive the residency requirement. Given that M&INA will only exist for a brief period of time prior to the interstate merger, waiver of the director residency requirements in this circumstance is warranted. Approval is granted for Thomas J. O'Neill, Douglas G. Hempel, Randall J. Erickson, John L. Roberts, Patricia R. Justiliano and Michael C. Smith.

M&I FSB maintains a liquidation account under OTS regulations as a result of its mutual-to-stock conversion. Following the charter conversion and the interstate merger, Harris must continue to maintain the liquidation account. Comptroller's Licensing Manual, *Conversions*, p. 13 (April 2004).

associations that convert to national banks.¹⁶ Whereas previously, certain federal savings banks converting to national banks were permitted to retain branches established prior to the enactment of the GLBA in November 1999, pre-GLBA branches pursuant to § 1464(i)(5), and post-GLBA branches if permissible pursuant to an analysis of § 36(c) or § 36(g),¹⁷ the Dodd-Frank Act has now expanded the branching authority of all federal savings banks that convert to national banks. Pursuant to this authority, it is legally permissible for M&INA to retain M&I FSB's existing branches in Wisconsin and Minnesota without further analysis.¹⁸

Accordingly, M&INAs request to retain M&I FSB's main office and branches after the conversion is legally permissible and approved.

C. Retention of M&I FSB's Operating Subsidiaries after Conversion

On conversion, M&INA requests to retain three subsidiaries currently owned by M&I FSB.¹⁹ M&I Zion Investment Corporation, holds investment securities that are permissible for a national bank or its operating subsidiaries under 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(A) and (O). Additionally, M&INA wishes to retain M&I Zion Holdings, Inc., a holding company for M&I Zion Investment II Corporation, which is a REIT organized to hold mortgage-related assets and permissible for a national bank or its operating subsidiary pursuant to 12 U.S.C. § 24 (Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(C) and (O). Therefore, all three subsidiaries (M&I Zion Investment Corporation, M&I Zion Holdings, Inc., and M&I Zion Investment II Corporation) may be retained.²⁰

¹⁶ Pursuant to section 2, paragraph 18 of the Dodd-Frank Act, the term "savings association" has the same meaning as that in 12 U.S.C. § 1813 and therefore includes any federal savings association or savings bank. 12 U.S.C. § 1813(b)(1). Further, under the same provision of the Dodd-Frank Act, "bank" includes a national bank. 12 U.S.C. § 1813(a)(1).

¹⁷ The branch retention authority set forth in section 1464(i)(5) only covered converting federal savings banks that were in existence prior to November 11, 1999. The branching retention rights of federal savings banks that came into existence following that date were even more restrictive, limited to where the bank following the charter conversion could establish a branch either under intrastate branching authority (12 U.S.C. § 36(c)) or interstate branching authority (12 U.S.C. § 36(g)). *See, e.g.*, Applications to convert Chevy Chase Bank, F.S.B., McLean, Virginia, to a national bank and to merge the converted bank into Capital One, National Association, McLean, Virginia (OCC Conditional Approval No. 912, July 14, 2009) (stating "branches established after GLBA was enacted on November 12, 1999, or post-GLBA, may be retained under separate authority found in 12 U.S.C. § 36(c) . . .").

¹⁸ M&I FSB does not have any approved, but unopened branches.

¹⁹ Additionally, as indicated in the filing, M&I FSB owned a 55% interest in Pleasantview, LP, a low income housing tax credit project. However, that interest has since been sold to a third party and therefore is no longer a subsidiary or part of the filing.

²⁰ Harris has represented that M&I FSB does and, upon consummation of the conversion, Harris will: 1) have the ability to control the management and operations of each subsidiary by holding voting interests sufficient to select the number of directors needed to control each subsidiary's board and to select and terminate senior management; 2) hold more than 50 percent of the voting, or equivalent, interests in each subsidiary; and 3) consolidate each subsidiary's financial statements with those of Harris under Generally Accepted Accounting Principles ("GAAP"). 12 C.F.R. § 5.34(e)(5)(i). Additionally, Harris has represented that the activities conducted will be conducted in

D. Interstate Merger Under The Riegle-Neal Act

Harris also filed applications to merge M&I State Bank, M&INA, and THBNA with and into Harris, under the charter and title of the latter, pursuant to 12 U.S.C. §§ 215a-1, 1828(c) and 1831u (the “interstate merger”). The home state of Harris is Illinois; the home state of M&I State Bank is Wisconsin; the home state of M&INA is Nevada, and the home state of THBNA is Arizona.²¹ As a result, the transaction is an interstate merger of four FDIC-insured banks with different home states under the Riegle-Neal Act.²² The OCC may not approve an interstate merger if the transaction involves a bank whose home state has enacted a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks.²³ None of the four states have enacted an opt-out law.

Approval of an interstate merger transaction is also subject to certain requirements set forth in sections 1831u(a)(5) and 1831u(b), to the extent they are applicable. The OCC hereby determines that these requirements, as applicable, are met. These requirements are: (1) compliance with state-imposed age limits, if any;²⁴ (2) compliance with federal filing requirements and certain state filing requirements imposed by any host state that will result from the transaction;²⁵ (3) compliance with nationwide and state concentration limits; (4) community

accordance with OCC policies contained in guidance issued by the OCC regarding the activity. *See* 12 C.F.R. § 5.34(e)(5)(i)(B).

²¹ The “home state” of a national bank is the state where its main office is located. The “home state” of a state bank is the state that chartered the bank. 12 U.S.C. § 1831u(g)(4)(A). A “host state” is a state other than the home state of a bank in which the bank maintains or seeks to establish and maintain a branch. 12 U.S.C. §1831u(g)(5).

²² 12 U.S.C. § 1831u(a)(1).

²³ *See* 12 U.S.C. § 1831u(a)(2)(state “opt-out” laws).

²⁴ 12 U.S.C. § 1831u(a)(5)(A). This provision states that an interstate merger may not “have the effect of permitting an out-of-state bank...to acquire a bank in a host state that has not been in existence for the minimum period of time” specified by state law in accordance with the Riegle-Neal Act. In this situation, Harris is the acquiring bank and M&I, M&INA, and THBNA are being acquired. Consequently, the relevant host states for these purposes are Wisconsin, Nevada, and Arizona, the main office state of the target banks. Wisconsin, Nevada, and Arizona laws require that an interstate merger transaction resulting in the acquisition by an out-of-state bank of a bank in their state shall not be permitted unless such in-state bank has been in continuous operation, on the date of such acquisition, for a period of at least five years. *See* Wis. Stat. Ann. § 221.0901(8); Nev. Rev. Stat. § 664.405(1); and Ariz. Rev. Stat. § 6-324. All of the target banks have been in existence for more than five years.

²⁵ 12 U.S.C. § 1831u(b). The states that will become host states of Harris upon consummation of the interstate merger are those in which it currently has no branches, but in which it will acquire branches: Arizona, Florida, Kansas, Minnesota, Missouri, Nevada, and Washington. The applicant has documented its compliance with applicable host state filing requirements in those states and has provided copies of this application to those states as required by § 1831u(b)(1)(A)(ii).

reinvestment compliance;²⁶ and (5) adequacy of capital and management skills.²⁷ The OCC hereby determines that the application satisfies these conditions to the extent applicable, and the interstate merger of M&I State Bank, M&INA, and THBNA with and into Harris is legally authorized under the Riegle-Neal Act.

Harris has also requested and may retain M&I State Bank's foreign branch in the Cayman Islands, established pursuant to 12 U.S.C. § 601 and Regulation K, 12 C.F.R. § 211.²⁸

E. Additional Statutory and Policy Reviews

1. Bank Merger Act

The OCC reviewed the proposed merger transaction under the criteria of the Bank Merger Act,²⁹ and other applicable statutes, OCC regulations and policies. The Bank Merger Act requires the OCC's approval for a merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the 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. For the reasons stated below, we find that the interstate merger may be approved under section 1828(c).

a. Competitive Analysis

²⁶ The requirements of 12 U.S.C. § 1831u(b)(2), with respect to concentration limits, and § 1831u(b)(3), with respect to the special CRA provisions, are not applicable to mergers, such as these, between affiliated banks. *See* 12 C.F.R. § 1831(u)(2)(E)(concentration limits inapplicable to affiliated banks); § 1831u(b)(3)(expanded community reinvestment analysis applies only where the resulting bank would have a branch or bank affiliate in any state in which it had no branch or bank affiliate immediately prior to the transaction; as previously noted, Harris and the target banks will be affiliated prior to their merger). The CRA itself, however, is applicable and will be discussed subsequently.

We note also that concentration limits applicable to interstate merger transactions adopted in § 623(a) of the Dodd-Frank Act (to be codified at 12 U.S.C. § 1828(c)(13)(A) and (B)) do not apply to mergers between affiliates. Section 622 of the Dodd-Frank Act establishes a financial sector concentration limit that generally prohibits a financial company from merging, consolidating with, or acquiring another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies. Section 622 is applicable and we found that the interstate merger complies with this requirement.

²⁷ Consistent with 12 U.S.C. § 1831u(b)(4), the OCC finds that each bank was at least adequately capitalized as of the date the application was filed and that Harris will continue to be adequately capitalized and adequately managed upon consummation of the mergers. Changes to these standards included in § 607 of the Dodd-Frank Act with regard to the acquiring bank do not become effective until the "transfer date" as defined in that legislation.

²⁸ Pursuant to 12 C.F.R. § 28.3(a), national banks are required to notify the OCC of their ownership of foreign branches. Harris included the foreign branch in the application in fulfillment of this requirement. Nothing in the OCC's rules or this Approval relieves Harris from complying with the requirements that are imposed by the Federal Reserve Board under Regulation K, 12 C.F.R. Part 211. *See* 12 C.F.R. § 28.10(c).

²⁹ 12 U.S.C. § 1828(c) ("the Bank Merger Act" or "Act").

Because the parties to the merger will be already owned by the same holding company and therefore affiliated, the interstate merger will have no anticompetitive effects.

b. Financial and Managerial Resources

The OCC considered the financial and managerial resources of the existing and proposed banks, their future prospects, and the convenience and needs of the communities to be served. We find that the financial and managerial resources of the four banks in the interstate merger, and of Harris as the resulting bank, do not raise concerns that would cause the application to be disapproved. The interstate merger will achieve efficiencies and economies of scale. It will create a stronger and expanded banking association with an enhanced ability to serve the convenience and needs of the community. The resulting bank will be well-capitalized and well-managed. The future prospects of the resulting bank are thus considered favorable and consistent with an approval.

In addition, the Bank Merger Act requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities. . . .”³⁰ The OCC considered these factors and found them to be consistent with approval under the statutory provisions.

c. Convenience and Needs

The interstate merger will have no adverse impact on the convenience and needs of the communities to be served. Harris will continue to serve the same areas that the four merging banks serve today. Harris will be able to offer increased credit availability as well as a broader range of, and expanded access to, financial products and services. At this time, Harris has no plans to eliminate products or services currently offered by the merging banks, but may supplement such products or services currently offered by Harris. No branches have been identified for closing. If branches in close proximity to each other are later determined to be redundant and are identified for closure, such closures will be made in accordance with applicable statutes and regulations. Accordingly, we believe the impact of the interstate merger on community convenience and needs is consistent with approval.

2. Community Reinvestment Act

The CRA requires the OCC to take into account the records of the institutions proposing to engage in a conversion or a merger in helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating conversion and merger applications.³¹ The OCC considers the CRA Performance Evaluation (“PE”) of each institution involved in the transaction. A review of the records of these applicants, and other

³⁰ 12 U.S.C. § 1828(c)(11).

³¹ 12 U.S.C. §§ 2903(a)(2) and 2902(3)(E); 12 C.F.R. § 25.29(a)(3).

information available to the OCC as a result of its regulatory responsibilities, revealed the institutions' record of helping to meet the credit needs of their communities, including LMI neighborhoods, are satisfactory and are consistent with approval.

a. Harris

Harris' latest PE, dated July 1, 2009, and issued by the OCC, assigned the bank a "Satisfactory" rating.³² Among the major factors supporting the rating were: (i) an excellent level of lending activity; (ii) an excellent borrower distribution of small business loans; (iii) a good borrower distribution of Home Mortgage Disclosure Act ("HMDA") loans; (iv) a good volume of investment activity; (v) a good level of community development services; (vi) an adequate geographic distribution of HMDA loans and small business loans; (vii) a positive impact of community development lending; and (viii) reasonable accessibility of office locations combined with an excellent record of opening offices. No evidence of illegal or discriminatory lending practices was noted in the PE.

b. M&I State Bank

M&I State Bank's latest PE, dated February 16, 2009, and issued by the Federal Reserve Bank of Chicago, assigned the bank an "Outstanding" rating.³³ Among the major factors supporting the rating were: (i) an excellent level of qualified investments and grants, with an extensive use of innovative and complex investments; (ii) a good borrower distribution of HMDA reportable loans to LMI borrowers throughout the majority of the bank's Wisconsin assessment areas; (iii) a good geographic distribution of HMDA reportable lending in the majority of the assessment areas, and good distribution of loans to small businesses; (iv) a substantial majority of loans made within the bank's assessment areas; (v) leadership in making community development loans and providing community development services; (vi) delivery systems that were accessible to all portions of the assessment areas, including LMI areas; and (vii) services that were tailored to the convenience and needs of the assessment areas, including LMI areas. No evidence of illegal or discriminatory lending practices was noted in the PE.

c. M&I FSB

³² Harris was examined using the large bank examination procedures and received a "High Satisfactory" on the lending, investment, and service tests. The bank's overall rating is a blend of the multistate metropolitan area ("MMA") ratings and state ratings. The rating for the Chicago-Naperville-Joliet, IL-IN-WI MMA carried the greatest weight as this area represents 92% of Harris' deposits. The evaluation period for this MMA for home mortgage loans and small loans to businesses and farms was January 1, 2006, through December 31, 2008. Community development loans, investments, and services were reviewed from July 1, 2006, through June 30, 2009.

³³ M&I State Bank was evaluated using large bank full review examination procedures and received an "Outstanding" on the investment and service tests and a "High Satisfactory" on the lending test. HMDA reportable loans, specifically home purchase and refinance loans, loans to small businesses, and small farm lending made between January 1, 2007, and December 31, 2008, were analyzed, with the exception of the Indiana assessment area whose evaluation period was from February 2, 2008, through December 31, 2008.

In the December 11, 2008, PE issued by the OTS, M&I FSB received an overall “Satisfactory” CRA performance rating.³⁴ Among the major factors supporting M&I FSB’s rating were: (i) a very strong level of qualified investments and grants; (ii) a satisfactory lending performance supported primarily by community development lending activities; (iii) alternative avenues for banking services such as online and telephone banking; and (iv) bank personnel involvement in community development organizations that promoted affordable housing or assisted LMI individuals. The PE states that no violations of the substantive provisions of the anti-discrimination laws or regulations were identified.

d. THBNA

In the July 1, 2009, PE issued by the OCC, THBNA received an overall “Satisfactory” CRA rating.³⁵ Among the major factors supporting THBNA’s rating were: (i) an excellent responsiveness to the credit needs within the bank’s assessment areas; (ii) an excellent level of qualified investment activity; (iii) a good level of lending to borrowers of different income levels; (iv) a positive impact on lending performance attributed to community development lending; (v) a good level of community development services; (vi) an adequate geographic distribution of loans; and (vii) an adequate geographic distribution of bank offices. No evidence of illegal discrimination or other illegal credit practices were noted in the PE.

e. Public Comments

The OCC did not receive any comment letters from the public on the conversion and bank merger applications, but did receive copies of letters to the Board of Governors of the Federal Reserve System expressing concerns about the related bank holding company merger application. While the OCC did not receive the comments directly, we have carefully considered the concerns raised.

Based on an analysis of 2009 HMDA data, commenters expressed concerns regarding Harris’ denial rates for prime home purchase loans to African Americans and denial rates for conventional home purchase loans for Latinos in the Milwaukee, WI, Chicago, IL, and Gary, IN MSAs. Commenters also expressed concern regarding M&I State Bank’s denial rates for prime home loans to LMI borrowers and female borrowers in the Milwaukee MSA.³⁶ Additionally,

³⁴ M&I FSB received an “Outstanding” rating under the investment test and “Low Satisfactory” under the lending and service tests. The evaluation period was from January 1, 2005, through December 31, 2007.

³⁵ The bank received an “Outstanding” on the investment test, a “High Satisfactory” under the lending test, and “Low Satisfactory” on the service test. The evaluation period for the PE was from January 1, 2006, through December 31, 2008, for the lending test. For community development loans and the investment and service tests, the period was July 1, 2006, through June 30, 2009.

³⁶ Lending disparities are of concern to the OCC and are evaluated in fair lending examinations. However, HMDA data alone is 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. HMDA data does not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor does it fully reflect the range of the bank’s lending activities or efforts.

commenters expressed concern over both banks' provision of small business loans of less than \$100,000 as compared to their peers within the Milwaukee MSA. One commenter expressed concern regarding Harris' CRA ratings in Wisconsin and Indiana. Finally, one commenter expressed concern regarding M&I State Bank's level of lending and services to minorities and LMI individuals and areas within the Milwaukee inner city.

As summarized above, Harris and M&I State Bank received ratings of "High Satisfactory" on the lending test in their most recent CRA PEs. During the evaluation period for community development loans, Harris made 112 community development loans totaling \$172 million. Harris' community development lending represents nearly 6 percent of Tier 1 capital allocated to the Chicago Assessment Area.

Harris represented that it seeks to extend its lending to LMI and minority borrowers via outreach efforts at local schools and housing counseling agencies. Harris participates in downpayment assistance programs offered by the Federal Home Loan Bank of Chicago, the Wisconsin Partnership for Housing Development, and the Milwaukee County Economic and Community Development. Harris also offers grant programs which provide closing cost assistance to LMI individuals and areas.

Harris further represented that it indirectly finances affordable housing development through its community development investments. As of the end of April 2011, Harris represented that it had outstanding qualified CRA investments, loans, and commitments totaling over \$150 million. Such investments include financing in the form of low income housing tax credit equity bridge loans and tax increment financing loans that help provide housing to families and individuals at or below 60% of the area median family income. An equity investment of nearly \$4.0 million supported the construction of 95 units of affordable rental housing for LMI families in Milwaukee.

Though deposits in Wisconsin and Indiana represent 4.65% and 3.6% of Harris' total deposits respectively,³⁷ Harris anticipates building upon the acquisition to expand its footprint in each market. In its response, Harris represented that it recently made community development loans and investments totaling nearly \$20 million to benefit LMI communities and minority-owned businesses as well as funding of affordable housing projects throughout Milwaukee and the greater Wisconsin region. In Indiana, Harris represented that it recently made community development loans and investments totaling nearly \$32 million to support affordable housing development and small businesses throughout Northwest Indiana.

As represented in Harris' response to the commenters, Harris offers an array of products -from term loans to revolving lines of credit secured by various types of collateral - to support a variety of business loan requests. In years 2009, 2010, and 2011 (year-to-date) in both the Chicago and Milwaukee markets, more than 50% of small business loans made by Harris were in amounts under \$100,000. Harris represented that it also indirectly supports small dollar loans through

³⁷ Harris entered the Milwaukee, WI market upon its acquisition of Community Bank Group on February 29, 2008.

investments in local not-for-profit lenders who originate small and micro loans to small businesses in the greater Milwaukee area.

As stated in M&I State Bank's most recent PE, during 2007 and 2008, the bank originated 551 community development loans totaling approximately \$1.4 billion in its assessment areas. Through its community development corporation, M&I Community Development Corporation, M&I State Bank has participated in New Markets Tax Credit investments that are located within community development block grant areas and inner city communities. M&I State Bank has funded housing projects within high minority census tracts through partnership with and funding to the Wisconsin Housing and Economic Development Authority.

M&I State Bank offers a variety of loan products to address the credit needs of LMI individuals or census tracts and small businesses. Products include the Neighborhood Home Loan Program, a first-time homebuyer program to provide home mortgages with low down payment requirement and other features that make home ownership more affordable for LMI individuals. M&I State Bank also partners with SBA to offer financial opportunities to start, build, or expand businesses.

As noted in M&I State Bank's most recent PE, the bank's performance under the service test was rated "Outstanding". In addition to branches and ATMs within LMI areas, M&I offers products designed to better serve LMI individuals including the Foundation Checking Account, Thrift Savings Account, Credit Builder, and first-time homebuyer programs.

In addition to receiving CRA examinations, Harris and M&I State Bank have been subject to ongoing fair lending supervisory oversight by the OCC and the Federal Reserve Bank. Comprehensive OCC oversight will continue with respect to the merged entity. Upon consummation of the conversion and interstate merger, M&I State Bank (as well as the other merging banks) will be integrated into Harris' fair lending processes and procedures.

Harris has represented that its fair lending program consists of fair lending policies, fair lending analysis, oversight and monitoring, and staff training. Harris represented that it also conducts a separate fair lending audit to test adherence to policies and procedures. All denials are reviewed by a second underwriter prior to final decision.

f. Conclusion

In sum, our review of the record of the applications, including the materials submitted with the applications, the public comment, responses to the public comment, representations of the applicant, and our review of supervisory materials, has not revealed any information inconsistent with approval.

F. Branch Retention after the Interstate Merger

Harris' main office is in Illinois, and its branches are located in Illinois, Wisconsin and Indiana. M&I State Bank is headquartered in Wisconsin, with branches in Wisconsin, Arizona, Florida,

Kansas, Illinois, Indiana, Minnesota, and Missouri. Upon consummation of the charter conversion, M&INA will have its main office in Nevada with branches in Minnesota and Wisconsin. THBNA is headquartered in Arizona, with branches in Arizona, Florida, and Washington. Harris has requested retention of its own main office as the main office of the resulting bank, the retention of all main offices of the targets as branches of Harris, and the retention of all branches of all banks as branches of Harris.³⁸

The Riegle-Neal Act provides that, subject to the approval of the OCC, following an interstate merger, the resulting bank may retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.³⁹ Consequently, upon consummation of this merger, Harris is authorized to retain Harris's own main office as its main office, and retain and operate as branches its own branches and the main office and branches of M&I State Bank, M&INA, and THBNA as branches.

G. Retention of Subsidiaries and Investments

In addition to the subsidiaries currently owned by Harris and M&I FSB,⁴⁰ Harris requests approval to retain a number of operating subsidiaries and investments discussed below.⁴¹ Specifically, Harris requests to retain the following M&I State Bank subsidiaries: 1) M&I Regional Properties, LLC; 2) Astoria II, LLC; 3) M&I Custody of Nevada, Inc.; 4) M&I Portfolio Services, Inc.; 5) M&I Dealer Finance, Inc.; 6) M&I Equipment Finance Company; 7) M&I Mortgage Reinsurance Corporation; 8) M&I Marshall & Ilsley Investment Corporation; 9) M&I Insurance Services, Inc.; 10) M&I Marshall & Ilsley Regional Holdings, Inc.; 11) M&I Marshall and Ilsley Holdings, Inc.; 12) M&I Marshall and Ilsley Investment II Corporation; 13) M&I Mortgage Pass-Through Business Trust Services, 2004-1; 14) Water Street Land, LLC; 15) Milease, LLC; 16) Calhoun Holdings, LLC; 17) M&I Business Credit, LLC; 18) M&I Business Credit Holdings, Inc.; 19) M&I Realty Advisors, Inc.; 20) Northern NVSL, LLC; 21) Speedway HVSL, LLC; 22) Trustee Corporation, Inc.; 23) SWB of St. Louis Holdings, Inc.; 24) SWB of

³⁸ None of the merging banks have any approved, but unopened branches.

³⁹ 12 U.S.C. § 1831u(d)(1). *See also*, 12 U.S.C. § 36(d).

⁴⁰ See Part II, section C, *supra*, for the discussion of M&INA subsidiaries that will be retained following the charter conversion of M&I FSB. For the reasons discussed therein, these subsidiaries also may be retained by Harris following consummation of the merger.

⁴¹ As part of the interstate merger, Harris also will acquire as nonconforming assets stock in certain Federal Home Loan Banks ("FHLB") and certain shares of remarketed preferred stock. Harris is currently a member of the FHLB of Chicago. M&I State Bank owns shares of capital stock of the FHLBs of Chicago, Des Moines, Indianapolis and Topeka. M&I FSB owns shares of the capital stock of the FHLB of San Francisco. Harris will consolidate M&I State Bank's shares in the FHLB of Chicago with its own. In all other cases, if the predecessor bank has not already done so, Harris will notify each of the other FHLBs of its intent to redeem its capital stock in the applicable FHLB, thereby commencing a FHLB waiting period for redemption. Harris will redeem the stock as promptly as possible in accordance with the relevant redemption procedures established by each FHLB. *See* 12 C.F.R. § 5.33(e)(5).

St. Louis Holdings I, LLC; 25) SWB of St. Louis Holdings II, LLC; 26) SWB Investment II Corporation; and 27) Louisville Realty Corporation.⁴²

1. Operating Subsidiaries

Generally, the operating subsidiaries to be acquired by the Resulting Bank are engaged in lending or leasing related activities, investing in real estate loans, safekeeping and custody services, as well as holding of other-real-estate-owned (“OREO”) from debts previously contracted.⁴³

- M&I Regional Properties, LLC; Astoria II, LLC; Water Street Land, LLC; Milease, LLC; Calhoun Holdings, LLC; Northern NVSL, LLC; Speedway HVSL, LLC; and Louisville Realty Corporation are OREO subsidiaries and may be retained as Harris operating subsidiaries pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(A).⁴⁴
- M&I Custody of Nevada, Inc., provides custody, trade settlement, wire transfer, and security safekeeping services to customers of affiliates and may be retained as an operating subsidiary pursuant to 12 U.S.C. § 24 (Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(F),(W),(Z), and (BB) and 12 C.F.R. § 7.5007.⁴⁵

⁴² Additionally, M&I State Bank has made direct investments in community development projects and owns community development subsidiaries: M&I New Markets funds, LLC, M&I MEDC Fund, LLC, and M&I Community Development Corporation. M&I Community Development Corporation was recently contributed to M&I State Bank by M&IHC. Harris has requested to retain all three community development corporations and other direct community development investments following the interstate merger under the investment authority of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24. The subsidiaries and investments will be discussed in the subsequent section.

⁴³ Harris has represented that M&I State Bank does and, upon consummation of the conversion, Harris will: 1) have the ability to control the management and operations of each subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary’s board and to select and terminate senior management; 2) hold more than 50 percent of the voting, or equivalent, interests in each subsidiary; and 3) consolidate each subsidiary’s financial statements with those of Harris under GAAP. 12 C.F.R. § 5.34(e)(5)(i). Additionally, Harris has represented that the activities conducted will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. See 12 C.F.R. § 5.34(e)(5)(i)(B).

We also note that Sections 1044(a) and 1045 of the Dodd-Frank Act eliminate preemption of state law for national bank subsidiaries as of the “transfer date” of July 21, 2011.

⁴⁴ Property conveyed to a national bank in settlement of debts previously contracted must be disposed of at the earliest time that prudent judgment dictates, but no later than five years from the date of the acquisition of the real estate. 12 U.S.C. § 29 and 12 C.F.R. § 34.82(a). Such period may be extended by the OCC for five additional years. 12 C.F.R. § 34.82(a).

⁴⁵ In Corporate Decision No. 2001-30, we concluded that the activities of a qualified intermediary are akin to the custodial and safekeeping functions that national banks traditionally have performed for their customers. Although Harris has and will continue to have trust powers after the interstate merger, national banks are not required to have trust powers to offer these custodial and safekeeping services. *E.g.*, Conditional Approval No. 267 (Jan. 12, 1998).

- M&I Portfolio Services, Inc., provides services to other financial institutions that want to establish and maintain an investment subsidiary in Nevada, including safekeeping of permissible investments and general investment accounting. Therefore, the subsidiary may be retained pursuant to 12 C.F.R. §§ 5.34(e)(5)(v)(F), (H) and (J).
- M&I Dealer Finance, Inc., conducts indirect lending secured by vehicles, boats, and RVs. It formerly conducted automobile leasing and therefore its portfolio contains some leases that will be retained until maturity. It may be retained pursuant to 12 U.S.C. §§ 24(Seventh) and (Tenth) and 12 C.F.R. §§ 5.34(e)(5)(v)(D) and (M).
- M&I Equipment Finance Company engages in commercial leases, interim funding agreements, and secured loans to business customers for the purchase or lease of business equipment on a “full payout” and “net lease” basis and may be retained pursuant to 12 U.S.C. §§ 24(Seventh) and (Tenth), 12 C.F.R. Part 23, and 12 C.F.R. §§ 5.34(e)(5)(v)(D) and (M).
- M&I Mortgage Reinsurance Corporation is a Vermont corporation with a captive insurance license that provides private mortgage insurance on loans originated, purchased, or serviced by its bank parent and may be retained pursuant to 12 C.F.R. § 5.34(e)(5)(v)(Q).
- M&I Marshall & Ilsley Investment Corporation holds investment securities, such as mortgage backed securities, other asset-backed securities, municipal bonds, and corporate bonds and may be retained pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 1.3(a) and 5.34(e)(5)(v)(A).
- M&I Insurance Services, Inc., acted as an agent or broker of insurance products, but no longer conducts any activities or performs services. It holds a money market investment account and may be retained pursuant to 12 C.F.R. § 5.34(e)(5)(v)(A).⁴⁶
- M&I Marshall & Ilsley Regional Holdings, Inc., and M&I Marshall and Ilsley Holdings, Inc., are holding companies for the purpose of holding M&I Marshall and Ilsley Investment II Corporation (“M&I Investment II”) and M&I Mortgage Pass-Through Business Trust Services, 2004-1 (“M&I Business Trust”).⁴⁷ M&I Investment II and M&I Business Trust are structured as REITs and hold investments in mortgage related assets, including mortgage backed securities. These types of assets are permissible pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(A),(C), and (D). Therefore, all four entities may be retained.

⁴⁶ If Harris intends to resume any activities in the subsidiary, it should file the appropriate application or notices as required by 12 C.F.R. §§ 5.34 or 5.36, or other applicable statute or regulation.

⁴⁷ M&I Marshall & Ilsley Regional Holdings, Inc. is expected to be dissolved after the holding company acquisition, but prior to the proposed bank mergers. M&I Mortgage Pass-Through Business Trust Services 2004-1 is expected to be dissolved prior to the proposed bank mergers. However, both subsidiaries may be retained, as discussed above, if they are not dissolved prior to consummation of the interstate merger.

- M&I Business Credit Holdings, Inc., has no activities other than holding a 1% interest in M&I Business Credit, LLC, a permissible investment.⁴⁸ M&I Business Credit LLC, provides asset based lending to business customers secured by commercial accounts receivables and inventory as well as loans secured by commercial equipment and is permissible for a national bank or an national bank operating subsidiary and may be retained pursuant 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(C). Therefore, both subsidiaries may be retained.
- M&I Realty Advisors, Inc., executes referral forms with third party real estate brokers by M&I State Bank or another affiliate to handle the sale of their OREO and collects a referral fee. It does not provide any services to nonaffiliates nor does it conduct any other activities besides collecting a referral fee for OREO properties. The activity is part of managing the bank and affiliates' OREO and is permissible pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(A) and (B).
- Trustee Corporation, Inc., acts as a trustee under deeds of trusts for loans originated by M&I State Bank and its affiliates. In states where real estate loans are secured by deeds of trust, rather than mortgages, the trustee holds the deed of trust until the loan is paid off. Such activities are permissible pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(B), (C), and (D).
- SWB of St. Louis Holdings, Inc., SWB of St. Louis Holdings I, LLC, and SWB of St. Louis Holdings II, LLC, are holding companies for the purpose of holding SWB Investment II Corporation.⁴⁹ SWB Investment II Corporation is structured as a REIT and holds investments in mortgage related assets, including mortgage backed securities. These types of assets are permissible pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 5.34(e)(5)(v)(A), (C), and (D). Therefore, all four entities may be retained.

Consequently, Harris is approved to retain the operating subsidiaries discussed above.

2. Community Development Projects, Community Development Corporations and other Public Welfare Investments

Harris has requested permission to retain three M&I State Bank community development corporations that engage in community development projects. In addition, Harris has requested permission to retain community development investments that were made directly by M&I State Bank. Harris seeks to retain these assets as public welfare investments pursuant to 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24.

⁴⁸ The balance of the ownership is held by M&I State Bank.

⁴⁹ All four subsidiaries are expected to be dissolved prior to the proposed interstate bank merger. However, all four subsidiaries may be retained, as discussed above, if they are not dissolved prior to consummation of the interstate merger.

The first entity, the M&I New Markets Fund, LLC, is a community development entity through which M&I State Bank made loans, totaling \$115,000,000, which qualify for New Market Tax Credits. The M&I New Markets Fund, LLC used those funds to make qualifying equity investments in designated community development entities in Wisconsin, Arizona, Florida, Kansas, Minnesota, Missouri, and the City of Indianapolis, Indiana.

The second entity, the M&I MEDC Fund, LLC, is a community development entity through which M&I State Bank made investments, totaling \$1,308,462, which qualify for New Market Tax Credits. M&I MEDC Fund, LLC used those funds to make qualifying equity investments in mixed-use projects located in distressed areas of the City of Milwaukee, Wisconsin, with the ultimate goal of creating jobs and sustainable economic development.

The third entity, M&I Community Development Corporation, is a community and economic development entity through which M&I State Bank made investments, totaling \$74,636,284.⁵⁰ The M&I Community Development Corporation made investments in Small Business Investment Companies and in projects involving New Market Tax Credits, Historical Rehabilitation Tax Credits, Federal Low Income Housing Tax Credits, and in other projects that support affordable housing and real estate development, financing for small businesses, stabilization of government-designated areas, and that supplement traditional bank lending in Wisconsin, Missouri, Minnesota, Arizona, Ohio, Indiana, Nevada, and Florida. Several of the investments covered a nationwide geography. The M&I Community Development Corporation also made loans and equity equivalent investments, totaling \$8,076,250, to a variety of nonprofit corporations, foundations, and other entities.

M&I State Bank also made direct investments in a variety of nonprofit corporations, foundations and other entities totaling \$926,445. M&I State Bank's investments financed affordable housing projects involving Federal Low Income Housing Tax Credits and Historic Rehabilitation Tax Credits in St. Louis, Missouri; Minneapolis, Minnesota; and Indianapolis, Indiana.

Harris has represented that investments undertaken by the M&I New Markets Fund, LLC, M&I MEDC Fund, LLC, and M&I Community Development Corporation as well as those made by M&I State Bank comply with the public welfare, primary beneficiary requirement of 12 C.F.R. § 24.3 and primarily benefit low- and moderate income persons, low- and moderate-income areas, areas targeted for redevelopment by a government entity, or otherwise considered qualified investments under 12 C.F.R. § 25.23.

Harris represented that the aggregate investments and outstanding commitments in the M&I New Markets Fund, LLC, the M&I MEDC Fund, LLC, the M&I Community Development Corporation, and M&I State Bank investments that it seeks to retain as public welfare

⁵⁰ The OCC has requested that Harris submit additional information to the OCC Community Affairs Department about one investment, LFE Growth Fund II, totaling approximately \$700,000, held by M&I Community Development Corporation, and describe its compliance with the public welfare, primary beneficiary requirements, as outlined under 12 C.F.R. § 24.3. Should the OCC determine that the investment does not meet the requirements of 12 C.F.R. Part 24, Harris has represented that it will be divested as required by OCC policy and regulations.

investments under 12 C.F.R. Part 24 and 12 U.S.C. 24 (Eleventh) total approximately \$199,947,441. Harris also represented that investments by the M&I New Markets Fund, LLC, the M&I MEDC Fund, LLC, the M&I Community Development Corporation, and M&I State Bank investments comply with the investment limit requirements of 12 C.F.R. § 24.4 and are structured so as to not expose Harris to unlimited liability upon consummation of the transaction.

Further, the percentage of Harris' capital and surplus represented by its total, aggregate investments and outstanding commitments, plus the total, aggregate investments and outstanding commitments that are the subject of this transaction, will be approximately [] percent. In no event shall Harris' aggregate public investments and commitments under 12 C.F.R. Part 24 and 12 U.S.C. § 24 (Eleventh) exceed 15 percent of its capital and surplus. If requested by the OCC, Harris will provide reports concerning its public welfare investments.

Consequently, Harris's retention of M&I New Markets Fund, LLC, M&I MEDC Fund, LLC, M&I Community Development Corporation and M&I State Bank investments after consummation of the interstate merger is consistent with 12 U.S.C § 24 (Eleventh) and 12 C.F.R. Part 24.

H. Change in Control

Additionally, the OCC received a Notice regarding the change in control of M&I Trust by Merger Sub, a direct and wholly-owned subsidiary of HFC, as a result of the holding company merger transaction.⁵¹ The change in control of M&I Trust will occur with the merger of M&IHC with and into Merger Sub, but prior to the Riegle-Neal interstate merger of the banks. M&I Trust will remain a separate charter and will not be part of the interstate merger of the banks.⁵² However, upon completion of all of the transactions, HFC will become the direct owner of M&I Trust.

As required by regulation, Harris published an announcement of the change in control. The OCC did not receive any comments from the public directly related to the change in control, but the Federal Reserve received comments related to the overall transaction.⁵³ OCC change in control regulations at 12 C.F.R. § 5.50(f)(5) provide specific grounds under which the OCC may disapprove a proposed acquisition. Based on a review of the facts on record and the representations and commitments made in connection with the Notice, and in consideration of the relevant factors, the OCC hereby determines that the Notice is technically complete and we do not disapprove the change in control.

⁵¹ M&I Trust is an uninsured, non-deposit taking national trust bank, and is therefore not considered a "bank" under the Bank Holding Company Act of 1956, as amended.

⁵² M&I Trust will retain its subsidiary, North Star Trust Company, an Illinois state-chartered trust company.

⁵³ See discussion in Part II, section E.2, Community Reinvestment Act, *supra*.

III. CONSUMMATION GUIDANCE

Please refer to the *Conversion* and *Business Combination* booklets for steps to complete the conversion and interstate merger.

These approvals are granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transactions will have been received prior to the conversion of M&I FSB and interstate merger, as appropriate, and that the merger of M&INA into Harris will occur immediately after the conversion of M&I FSB to a national bank.

As a reminder, the Central District Office must be advised in writing 10 days in advance of the desired effective date for the conversion and interstate merger so that the OCC may issue the necessary conversion authorization and merger certification letters. Additionally, Harris agrees to maintain the liquidation account established when M&I FSB converted from mutual to stock form.

The OCC will include branch authorizations, as appropriate, in the letters authorizing the conversion and certifying the consummation of the merger. With respect to the conversion application, you are reminded that the following items must be satisfactorily addressed on or before the effective date of the conversion of M&I FSB:

1. The converting institution must ensure that all other required regulatory approvals, non-objections, or waivers have been received.
2. The converting institution must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion.
3. Upon completion of all steps required to convert to a national banking association, the converted bank must submit the "Conversion Completion Certification" (enclosed) certifying that all of the steps required to convert M&I FSB to a national banking association have been completed.

When the institution has satisfactorily completed all of the above steps, the OCC will issue a "Conversion Completion Acknowledgment" officially authorizing the institution to commence business as a national banking association.

With respect to the interstate merger application, please ensure that you have submitted the following prior to your desired consummation date:

1. Harris must ensure that all other required regulatory approvals, non-objections, or waivers have been received.
2. A Secretary's Certificate for each institution certifying that a majority of each bank's board of directors approved the interstate merger.

3. Executed merger agreements with the Amended Articles of Association for the Resulting Bank attached.
4. A Secretary's Certificate from each institution certifying that the shareholder approvals have been obtained.

With respect to the Notice of change in bank control, please ensure that you have submitted the following prior to your desired consummation date:

1. The date of consummation of this change in control must be provided to Central District Office within 10 days after consummation. The transaction must be consummated as proposed in the Notice. If any of the terms, conditions, or parties to the transaction described in the Notice change, the OCC must be informed in writing prior to consummation to determine if any additional action or reconsideration is required. In such situations, the OCC reserves the right to require submission of an amended or new Notice of change in bank control.

IV. CONCLUSION

For the reasons set forth above, and subject to the commitments and representations made in the applications and by representatives of the applicants, and subject to the receipt by the applicants of all other applicable regulatory approvals, nonobjections and waivers, the OCC hereby approves:

- 1) the conversion of M&I FSB to a national bank, M&INA;
- 2) the retention by M&INA of M&I FSB's main office and branches;
- 3) the interstate merger of M&INA, M&I State Bank, and THBNA with and into Harris;
- 4) the retention by Harris of its main office and branches, and the retention of the main offices and branches of M&INA, M&I State Bank and THBNA as branches of Harris following consummation of the interstate merger;
- 5) the retention of operating subsidiaries, community development corporations and investments as described above, following the consummation of the interstate merger into Harris;
- 6) the change in control of M&I Trust by Merger Sub and by HFC; and
- 7) waives the requirements of 12 U.S.C. § 72 for all of the members of the board of directors of M&INA.

If the conversion, interstate merger, and change in control transactions have not been consummated within six months from the approval date, the approvals will automatically terminate unless the OCC grants an extension of the time period.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. 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 your applications. We would appreciate your response so we may improve our service. If you have questions regarding this letter, please contact Senior Licensing Analyst, Carolina Ledesma at (312) 360-8867. Please reference the application control numbers in any correspondence.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing

(2011-CE-01-003, 2011-CE-02-005, 2011-CE-11-002, and 2011-CE-12-075)