



**CRA Decision #184
September 2017**

April 6, 2017

George J. Getman, Esq.
Executive Vice President and General Counsel
Community Bank, National Association
5790 Widewaters Parkway
DeWitt, New York 13214

Subject: Application to merge Merchants Bank, South Burlington, Vermont,
with and into Community Bank, National Association, Canton, New York

OCC Control No.: 2016-NE-Combination-293640

Charter No.: 8531

Dear Mr. Getman:

The Office of the Comptroller of the Currency (OCC) hereby approves your application to merge Merchants Bank, South Burlington, Vermont (Merchants), with and into Community Bank, National Association, Canton, New York (CBNA). The OCC also grants approval for CBNA to retain its main office and branches, and to retain as branches Merchants' main office and branches. This approval is granted after a thorough review of the application, other materials supplied by the bank's representatives, and additional information available to the OCC, including commitments and representations made in the application, and during the application process.

I. Background and Transaction

CBNA is a wholly owned subsidiary of Community Bank System, Inc. (CBSI), a bank holding company, with financial holding company status, regulated by the Board of Governors of the Federal Reserve System (FRB). Merchants is a wholly owned subsidiary of Merchants Bancshares, Inc. (MBSI), a bank holding company. CBSI filed an application with the FRB to acquire MBSI. CBNA has represented that it will not consummate the bank merger prior to consummating the holding company merger. Following consummation of CBSI's acquisition of MBSI, CBNA proposes to acquire Merchants by merger. Consequently, at the time of the merger, Merchants will be affiliated with CBNA. The deposits of both institutions are insured by the Federal Deposit Insurance Corporation (FDIC). CBNA's main office is in Canton, New York, and it has branches in New York and Pennsylvania. Merchants is headquartered in South Burlington, Vermont, and it has branches in Vermont and Massachusetts. CBNA requested approval following the merger to retain its main offices and branches, and to retain as branches, Merchants' main office and branches.

The FRB received a comment on the proposed merger. The OCC has carefully considered the concerns of the commenter as they relate to the statutory and regulatory factors considered by the OCC in acting on the application, including performance under the Community Reinvestment Act (CRA), and the probable effects of the transaction on the convenience and needs of the communities to be served. The public comment will be discussed subsequently.

II. Legal Authority for the Transaction

Mergers of insured banks with different home states are authorized under 12 USC 1831u(a)(1),¹ which was adopted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal). Riegle-Neal imposes certain conditions on interstate merger transactions. These are: (i) compliance with state-imposed age limits, if any, subject to Riegle-Neal's limits; (ii) compliance with certain state filing requirements, if any; (iii) compliance with nationwide and state concentration limits; (iv) expanded community reinvestment compliance; and (v) adequacy of capital and management skills.² The OCC has considered these factors and determined that the merger satisfies all applicable Riegle-Neal requirements.

Following an interstate merger transaction under Riegle-Neal, subject to the approval of the OCC, 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.³ Therefore, upon consummation of the merger, CBNA may retain and operate all of the offices of both banks.

III. The Bank Merger Act

The OCC reviewed the proposed merger under the criteria of the Bank Merger Act (BMA), 12 USC 1828(c), and applicable related OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The OCC must also consider the financial and managerial resources and future prospects of the existing and resulting banks, the convenience and needs of the community to be served, and the risk to the stability of the banking and financial system.⁴ The BMA also requires the OCC to take into consideration the effectiveness of each insured depository institution involved in the proposed transaction in combating money-laundering activities.⁵ The OCC found approval of the application consistent with these factors.⁶ The OCC's consideration of the probable effect of the

¹ See also 12 USC 215a-1, which authorizes a national bank to merge with an out-of-state bank if the merger is approved pursuant to Riegle-Neal. 12 USC 215a-1(a).

² See 12 USC 1831u(a)(5) and 1831u(b).

³ 12 USC 1831u(d)(1) and 12 USC 36(d).

⁴ 12 USC 1828(c)(5)(last sentence); see also 12 CFR 5.33(e)(1)(ii)(B)(C) & (E).

⁵ 12 USC 1828(c)(11); see also 12 CFR 5.33(e)(1)(ii)(D).

⁶ The OCC also may not generally approve a merger if the resulting bank's level of deposits and consolidated liabilities exceed certain limits. See 12 USC 1828(c)(13), 12 USC 1852 and 12 CFR Part 251. Given the size of the banks involved in this transaction, these limits are not an issue in this case.

merger on the convenience and needs of the community to be served is discussed in detail under the Analysis of Public Comments section of this approval at Section V.

IV. 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 low- and moderate-income neighborhoods, when evaluating applications under the BMA. The OCC considered the CRA performance evaluation (PE) of each bank involved in this transaction. For the reasons discussed below, after a review of these records, information provided by CBNA in response to additional information requests made by the OCC and the FRB, and other information available to the OCC as a result of its regulatory responsibilities, the OCC has concluded that the banks' records of helping to meet the needs of their communities support approval of this application.

A. Community Bank, National Association

CBNA's most recent CRA PE, dated July 27, 2016, assigned the bank an overall "Satisfactory" rating.⁷ The major factors supporting this rating included: (i) lending levels that reflected an excellent responsiveness to the credit needs of CBNA's assessment areas (AAs); (ii) a good distribution of loans among census tracts of different income levels throughout the AAs, along with an excellent level of lending inside the bank's AAs; (iii) a good distribution of loans among borrowers of different income levels throughout the AAs; (iv) community development lending that had some positive impact on lending performance; (v) flexible lending products that had a positive impact on lending performance; (vi) investments that reflected good responsiveness to the credit and community development needs of the AAs; (vii) service delivery systems that were readily accessible to census tracts and individuals of different income levels in the AAs; and (viii) an adequate level of community development services.

B. Merchants Bank

Merchants' most recent CRA PE, dated February 17, 2015, assigned the bank an overall "Satisfactory" rating.⁸ The major factors supporting this rating included: (i) lending activity that reflected good responsiveness to AA credit needs; (ii) a substantial majority of home mortgage, small business, and small farm loans were originated inside the delineated AAs; (iii) the geographic distribution of loans reflected good penetration throughout Merchants' AAs; (iv) the distribution of borrowers reflected good penetration among retail customers of different income levels and businesses of different sizes throughout the bank's AAs; (v) a good record of serving

⁷ CBNA was evaluated for CRA purposes as a large institution. CBNA's CRA PE evaluated the bank for Home Mortgage Disclosure Act (HMDA) loans, small business loans, and farm loans for a period that covered January 1, 2012 through December 31, 2015. The CRA PE evaluated community development loans, investments and services for the period March 12, 2012 through July 26, 2016. A copy of the PE is available at: <https://www.occ.gov/static/cra/craeval/dec16/8531.pdf>.

⁸ The FDIC evaluated Merchants for CRA purposes as a large institution. Merchants' CRA PE evaluated the bank for HMDA loans, small business loans, and farm loans for 2013 and 2014. The CRA PE evaluated community development loans, investments and services from November 14, 2011 through February 17, 2015. A copy of the PE is available at: https://www5.fdic.gov/crapes/2015/06268_150217.PDF.

the credit needs of the most economically disadvantaged areas of its AAs, including low-income individuals and very small businesses and farms, consistent with safe and sound banking practices; (vi) origination of loans in several underserved middle-income census tracts; (vii) a relatively high level of community development loans; (viii) limited use of innovative and/or flexible lending practices to serve AA credit needs; (ix) a significant level of qualified community development investments and grants; (x) good responsiveness to the credit and community economic development needs of its AAs; (xi) occasional use of innovative and/or complex investments to support community development initiatives; (xii) delivery systems that were accessible to essentially all portions of Merchants' AAs; (xiii) branch openings and closings that did not adversely affect the accessibility of delivery systems, particularly in low- and moderate-income geographies or to low- and moderate-income individuals; (xiv) service and business hours that did not vary in a way that inconvenienced certain portions of the AAs, particularly low- and moderate-income geographies or individuals; and (xv) a relatively high level of community development services, particularly financial literacy.

V. Public Comment and Analysis

The FRB received one public comment with respect to the related holding company transaction, which was forwarded to the OCC for consideration in its decision process. The sole commenter raised concerns regarding CBNA's lending to minority geographies and individuals in the Buffalo-Niagara Falls (Buffalo) Metropolitan Statistical Area (MSA) and the Syracuse MSA.⁹ Citing 2015 HMDA data, the commenter expressed concerns regarding CBNA's application and denial rates for conventional home purchase loans and home refinance loans with respect to minority borrowers in the Buffalo and Syracuse MSAs. The commenter also expressed concerns regarding CBNA's origination of home improvement loans in the Buffalo MSA.

A. CRA Record of Performance and Convenience and Needs

The OCC has carefully considered the commenter's concerns as they relate to the statutory and regulatory factors considered by the OCC when reviewing an application under the BMA. In evaluating the proposed transaction, the OCC considers the banks' CRA performance and the probable effects of the proposed transaction on the convenience and needs of the community to be served. Though interrelated, as explained in the Public Notice and Comments booklet of the Comptroller's Licensing Manual (Mar. 2007), 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 merged entity will help to serve the needs of its community on a prospective basis.

With regard to CBNA's recent CRA performance, CBNA's CRA PE rated the bank an overall "Satisfactory," with ratings of "High Satisfactory" for the lending, investment, and services tests.¹⁰ CBNA's CRA record demonstrates a commitment to making mortgage products available

⁹ The commenter also noted that by virtue of this transaction there will be a reduction in the number of state chartered banks in Vermont.

¹⁰ In its most recent CRA PE, the OCC evaluated CBNA using revised assessment area delineations, which CBNA implemented pursuant to a condition imposed in connection with the OCC's approval of CBNA's 2015 merger

to the communities it serves. Specifically, the CRA PE noted that CBNA had good distribution of loans to borrowers and census tracts of different income levels throughout its assessment area.

In response to the commenter's concerns, CBNA represented that it has actively employed marketing and outreach strategies to strengthen its reach and service to low- and moderate-income and minority borrowers and geographies throughout its footprint. Specifically, CBNA explained that it has increased its advertising of affordable home programs in digital, television, radio, billboard, and print advertisements throughout its footprint. CBNA also represented that it has increasingly expanded its Spanish language capabilities, resources, and marketing through advertisements, increasing its bilingual staffing, and providing bilingual capabilities at its ATMs and for telephone services. CBNA represented that following consummation of this transaction, it will utilize these same marketing techniques across its entire combined footprint.

CBNA explained that it utilizes several flexible lending practices to meet the credit needs of low- and moderate-income and minority borrowers, including the Affordable Homeownership Grant Program, the Federal National Mortgage Association's HomeReady Mortgage Program, the United States Department of Agriculture's Guaranteed Rural Housing Program, and closing cost assistance for mortgages and home equity lines of credit.¹¹ CBNA detailed that each of these products enables underserved borrowers and communities to access funds for a home purchase, home refinancing, or an agricultural business. Specifically, CBNA explained that these products include benefits such as lender credits to assist with closing costs, lower down payment requirements to qualify for financing, or exclusion of private mortgage insurance requirements when a borrower cannot meet the minimum down payment requirement. CBNA represented that following consummation of this transaction, it will offer all of these products and programs across its entire footprint.¹² CBNA also highlighted that it utilizes mortgage lending programs through the State of New York Mortgage Agency and participates in the Federal Home Loan Bank of New York First Home Club. Both of these programs are designed to assist New York State borrowers.

Although the commenter focused predominantly on CBNA's record of performance in specific MSAs in upstate New York, the OCC looks to the probable effects the transaction will have on the convenience and needs of the community served by the combined entity. CBNA represented that Merchants does not have lending products tailored to meet the needs of underserved communities. Accordingly, CBNA asserted that its entry into the Vermont area will expand the

transaction with Oneida Savings Bank and the State Bank of Chittenango. *See* CRA DECISION NO. 171, Application to Merge The Oneida Savings Bank, Oneida New York and the State Bank of Chittenango, Chittenango, New York with and into Community Bank, National Associations, Canton, New York (November 12, 2015), *available at* <https://www.occ.gov/topics/licensing/interpretations-and-actions/2015/crad171.pdf>.

¹¹ CBNA represented that it participates in other programs that support affordable homeownership, such as programs offered by the Madison County Community Action Program, Mohawk Valley Community Action Agency, and Habitat for Humanity.

¹² CBNA also represented that it will continue providing mortgage services for loans originated by two trusts that are currently being serviced by Merchants. Both trusts focus on lending to low- and moderate-income borrowers.

number of lending products available to underserved borrowers and communities by virtue of CBNA's continuation of its flexible lending programs. However, CBNA will not continue Merchants' practice of accepting applications for Federal Housing Administration (FHA) and Veterans Administration (VA) loans on behalf of a third party mortgage company. CBNA explained that Merchants does not underwrite, originate, or service these loans. CBNA represented that its flexible mortgage loan products will fill any void caused by discontinuation of accepting FHA/VA applications.

CBNA represented that it also provides credit enhancement for small business borrowers. For example, CBNA represented that after the consummation of the transaction, it will continue to offer the Small Business Administration's loan guarantee products, the United States Department of Agriculture and Farm Service Agency loan guarantee products, and other loan products that benefit small businesses and farms.

In addition to lending programs, CBNA represented that it will continue to offer, after consummation of the transaction, a variety of free or low cost deposit products and services at all of the banks' branches, such as checking accounts that are free of monthly service charges and free savings accounts. CBNA also represented that it will continue to provide services for low- and moderate-income customers who receive government assistance, such as cashing United States government checks for free.

Moreover, CBNA represented that it will continue to build upon its own satisfactory record of CRA performance, as well as Merchants' satisfactory record, with respect to community development activities in the Vermont area. Specifically, CBNA represented that it intends to maintain Merchants' relationships with community development groups, including affordable housing agencies, while building upon Merchants' outreach and service to low- and moderate-income and minority borrowers. CBNA expressed its commitment to use the combined institutions' CRA Committee on an ongoing basis to identify and act upon CRA activities and initiatives across its expanded footprint. CBNA represented that, in addition to searching for new opportunities, it will: (i) continue outreach efforts initiated by Merchants, such as its financial literacy program; and (ii) contribute \$500,000 to the Merchants Bank Foundation, a non-profit foundation that makes grants.

B. Fair Lending

Pursuant to 12 CFR 25.28(c), the results of the OCC's evaluation of a bank's CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices. The OCC may lower the overall rating of an institution based on findings of discriminatory or other illegal credit practices. CBNA's and Merchants' most recent CRA PEs stated that the OCC and the FDIC, respectively, did not find evidence of discriminatory or other illegal credit practices inconsistent with helping to meet community credit needs.

With respect to the commenter's assertions based on the 2015 HMDA data, it should be noted that HMDA data alone are not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically,

HMDA data does not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of a bank's lending activities and efforts. Nevertheless, disparities in lending activity are of concern to the OCC and are evaluated in the course of the OCC's ongoing supervision of national banks and federal savings associations. CBNA has been subject to a number of supervisory activities to assess fair lending compliance by the OCC, and this oversight has not resulted in findings of discrimination.¹³

In response to the commenter's concerns, CBNA provided a detailed description of its fair lending compliance program and lending to minority borrowers and geographies. Specifically, CBNA represented that it maintains a Board of Directors' approved fair lending policy that promotes equal access to credit by creditworthy applicants regardless of race, ethnicity, national origin, gender, religion, or other prohibited bases. To reinforce this policy, CBNA explained that it requires all loan officers and other personnel involved with lending-related activities to take annual training on fair lending laws. The policy also requires that CBNA's Compliance Department conduct an annual fair lending risk assessment, the results of which are communicated to the Board of Directors and provide a basis for monitoring and addressing the bank's fair lending processes.

CBNA further represented that its Compliance Department maintains an independent internal audit function that reviews bank data and policies regarding fair lending on an annual basis, and HMDA data on a bi-annual basis.¹⁴ In conducting these reviews, CBNA elaborated that it relies upon HMDA data collection and report generating systems, as well as file reviews. CBNA also explained that its compliance program includes a second review process for certain HMDA reportable loan denials. CBNA represented that its second review process seeks to ensure compliance with applicable fair lending laws and consistent application of underwriting practices.

In addition to the above-referenced policies, monitoring mechanisms, and controls, CBNA pointed to its customer complaint resolution process and procedure as another tool it relies upon to address fair lending risks and concerns. CBNA stated that it reviews customer complaints, whether written or oral, to determine whether such complaints reflect either routine operational concerns or substantive issues. CBNA represented that all substantive complaints are directed to the bank's Chief Risk Officer, with access to complaints provided to the Compliance/CRA Officer, to ensure timely and appropriate resolution and tracking and to help identify and address potentially systemic issues.

¹³ The OCC supervises national banks and federal savings associations of all sizes for compliance with the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, and – for these entities with total assets of \$10 billion or less – the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*

¹⁴ The bank also represented that it reviews CRA data on a bi-annual basis.

CBNA further represented that it will continue to rely upon these same compliance tools, training, policies, and personnel to identify and address fair lending-related concerns for the combined entity after consummation of this proposed business combination. Moreover, CBNA represented that it relies upon the flexible mortgage products discussed above to assist in meeting the credit needs of minority borrowers.

In addition to providing details regarding its lending activities across CBNA's entire footprint, CBNA also responded to the commenter's concerns regarding the Buffalo and Syracuse MSAs, which were based upon 2015 HMDA data. In general, CBNA highlighted that its CRA PE assigned the bank a "Satisfactory" rating, with a "High Satisfactory" rating on the lending test. The OCC evaluated CBNA's performance in the Buffalo and Syracuse MSAs on a limited scope basis; however, CBNA noted that these limited scope reviews characterized the bank's performance as "not inconsistent" with the "Satisfactory" rating in the bank's full scope evaluation areas.

1. Buffalo MSA

In connection with the Buffalo MSA, the commenter raised concerns regarding CBNA's lack of lending to African American and Hispanic borrowers. In its response to the commenter's concerns, CBNA asserted that there are contextual factors that account for the low level of mortgage applications received from African Americans and Hispanics. Specifically, CBNA explained that it has a very minor presence within the Buffalo MSA, maintaining only four branches in the southern area of Erie County and none in Niagara County. Citing publicly available market share data compiled by the FDIC, CBNA stated that its four branches, none of which are located in the city of Buffalo, compete with 279 banking branches throughout the entire MSA that are operated by 16 FDIC-insured institutions. CBNA further stated that, as of June 2015, the Bank held 0.26 percent of the deposit market share in the Buffalo MSA.¹⁵

2. Syracuse MSA

The commenter raised similar concerns with respect to the lack of HMDA-reportable lending to African Americans in the Syracuse MSA. In responding to the commenter's concerns, CBNA again pointed to contextual factors. CBNA explained that it has 14 branches located throughout the three counties that make up the Syracuse MSA—four in Oswego County, six in Madison County, and four in Onondaga County where the city of Syracuse is located. Of these 14 branches, CBNA elaborated that 12 are located in rural areas and 2 branches are located in the suburbs of Syracuse city.

CBNA explained that it first entered Onondaga County in 1995 when it acquired a single branch, located 17 miles outside of Syracuse in the southwest corner of Onondaga County. CBNA also explained that it opened a limited service branch in 2008 specifically for CBNA employees inside one of the bank's administrative offices. CBNA further detailed that it did not add another full service branch in the Syracuse MSA until 2011 as a result of an acquisition of another

¹⁵ As of June 2016, CBNA's deposit market share was 0.28 percent in the Buffalo MSA, and it ranked 12th out of 16 total institutions in terms of market share size.

national bank. CBNA explained that this third branch is located in Cicero, New York, approximately 10 miles outside of the city of Syracuse. CBNA represented that in 2014, it opened a fourth branch in DeWitt, New York, much closer to the city of Syracuse, to build upon its growing presence within the Syracuse MSA and to better serve the Syracuse market.

CBNA represented that it is taking steps to address its lending and marketing in the Syracuse MSA pursuant to its recent growth and emergence in the market. Specifically, CBNA stated that it hired a mortgage loan originator in November 2016 to focus specifically on the credit needs of the Syracuse market, including outreach and marketing efforts to reach minority borrowers and communities. Moreover, CBNA asserted that it has employed more innovative and focused marketing in the Syracuse market, including advertising in locations accessible to users of mass transit and to university students, in addition to the broader television, print, and radio marketing detailed above. CBNA represented that it will continue to rely upon its outreach to minority borrowers and communities, including Spanish advertising campaigns, to increase its outreach and lending performance in the Syracuse MSA.

VI. Summary and Approval

As stated above, the CRA requires that the OCC consider the banks' past records of performance under the CRA, and also applies the convenience and needs standard, which considers how the resulting institution will help meet the credit needs of its communities. The discussion above details the factors that the OCC considered in arriving at its decision.

Based upon information detailed in the banks' most recent CRA PEs, the banks' records of serving its communities, CBNA's responses to additional information requests and information available to the OCC as a result of its supervision of CBNA, the OCC concludes that the banks' records of helping to meet the credit needs of their communities and the probable effects of the proposed transaction on the convenience and needs of the communities served are consistent with approval of the application.

Accordingly, based upon our review of the application, the public comment, and CBNA's responses to the comment, the bank's responses to OCC and FRB information requests, and supervisory materials and other information available to the OCC as part of its regulatory responsibilities, the application is approved.

Consummation Requirements

The Northeastern District Licensing Office must be advised in writing 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:

- An executed merger agreement.

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

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

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 these approvals, 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.

We have enclosed a letter requesting your feedback on how we handled your application. We would appreciate your response so we may improve our services. All correspondence regarding this application should reference the OCC Control Number. If you have any questions, please contact Licensing Analyst James Hill at 917-344-3430 or by e-mail at hilljm@occ.treas.gov.

Sincerely,

signed

Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosure: Survey Letter