



January 4, 2018

**CRA Decision #187
February 2018**

Patricia A. Robinson, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Subject: Application for the merger of Bank Mutual, Brown Deer, Wisconsin into Associated Bank, National Association, Green Bay, Wisconsin
OCC Control Number: 2017-CE-Combination-300262
Charter Number: 23695

Dear Ms. Robinson:

The Office of the Comptroller of the Currency (OCC) hereby approves the application to merge Bank Mutual, Brown Deer, Wisconsin (Bank Mutual) into Associated Bank, National Association, Green Bay, Wisconsin (Associated Bank). Associated Bank is authorized to retain its own main office as the main office of the resulting bank and to retain and operate as branches its existing branches and the branches of Bank Mutual. The OCC also approves Associated Bank's retention of subsidiaries of Bank Mutual, as further discussed below. This approval is granted after a thorough review of the application, other materials supplied by bank representatives, and additional information available to the OCC, including commitments and representations made in the application, and during the application process.

I. Background and the Transaction

Associated Bank is a \$30 billion national bank headquartered in Green Bay, Wisconsin and operates 225 branches in Illinois, Minnesota, and Wisconsin. Associated Bank is a wholly-owned subsidiary of Associated Banc-Corp, a Wisconsin corporation and a registered bank holding company.

Bank Mutual is a \$2.7 billion stock federal savings association headquartered in Brown Deer, Wisconsin and operates 57 branches in Wisconsin and one branch in Minnesota. Bank Mutual is a wholly-owned subsidiary of Bank Mutual Corporation, Milwaukee, Wisconsin, a registered savings and loan holding company.

Associated Banc-Corp submitted an application to the Federal Reserve Bank of Chicago to acquire Bank Mutual Corporation, pursuant to an Agreement and Plan of Merger by and between Associated Banc-Corp and Bank Mutual Corporation (Merger Agreement), dated July 20, 2017. Pursuant to the Merger Agreement, Bank Mutual Corporation will merge with and into

Associated Banc-Corp, with Associated Banc-Corp being the surviving company, and Bank Mutual will become a wholly owned subsidiary of Associated Banc-Corp. Following the consummation of the bank holding company merger, Bank Mutual will merge with and into Associated Bank, with Associated Bank continuing as the surviving institution.

The OCC and the Board of Governors of the Federal Reserve System (FRB) received comments from four parties regarding the proposed merger. The OCC carefully considered the concerns of the commenters 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 comments are discussed under the Public Comments and Analysis section below.

II. Legal Authority

A. 12 USC 215c

Mergers between national banks and federal savings associations are authorized under 12 USC 215c, which is implemented by 12 CFR 5.33(g)(2). Under 12 CFR 5.33(g)(2), the surviving national bank in such a merger must comply with the procedures of 12 CFR 215a as if the federal savings bank were a national bank, and the federal savings association must comply with the requirements of 12 CFR 5.33(n), the procedures of 12 CFR 5.33(o), and provide notice to the OCC under 12 CFR 5.33(k). Associated Bank and Bank Mutual have complied with the applicable requirements.

Associated Bank has also requested retention of Bank Mutual's branches as branches of Associated Bank after the merger is authorized. Under 12 USC 36(c), a national bank may establish branches in a state if a state bank may establish a branch at that location.¹ The OCC has determined that Associated Bank may retain Bank Mutual's branches under Wisconsin and Minnesota law.

B. Bank Merger Act

The OCC also reviewed the proposed merger transaction under the criteria of the Bank Merger Act (BMA), 12 USC 1828(c), and applicable OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 USC 1828(c)(11). Furthermore, the OCC must consider the risk of the transaction to the stability of the U.S. banking or financial system. 12 USC 1828(c)(5). The OCC considered these factors and found them consistent with approval of the Application.

¹ As Bank Mutual is a federal savings association, the branch retention provisions of 12 USC 36(b)(2) are inapplicable.

The OCC must also consider the convenience and needs of the community to be served under the BMA as well as the record of compliance with the CRA of each applicant bank in a merger transaction. 12 USC 1828(c)(5), 2903(a)(2), 2902(3)(E); 12 CFR 25.29(a)(3). As discussed in more detail below, the OCC has considered these factors and found them consistent with approval of the application.

III. Retention of Subsidiaries

Bank Mutual owns several subsidiaries, four of which are inactive, and three of which engage in activities which may be impermissible for a national bank to conduct. Associated Bank requests OCC authorization to hold some of these subsidiaries for a period of time after the merger for up to two years. Associated Bank has represented that it plans to take action to liquidate and dissolve each of the inactive subsidiaries immediately after consummation of the related holding company merger, and prior to the consummation of the bank merger. For the Bank Mutual subsidiaries that engage in activities which may be impermissible for a national bank to conduct, Associated Bank has represented that it will conform or dispose of its interest in those subsidiaries within a reasonable period of time, not to exceed 24 months from the consummation of the bank merger. A national bank resulting from a merger may, with OCC permission, retain for a reasonable time period, usually not more than two years, assets that are not generally permissible for national banks, in order to provide time to divest of the assets or bring them into conformance in an orderly manner. The OCC approves the bank's request to retain the nonconforming assets for up to two years to conform or divest them.

IV. Community Reinvestment Act and Convenience and Needs

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

A. Community Reinvestment Act

The CRA requires the OCC to take into account the records of the banks' performance in helping to meet the credit needs of their communities, including low- and moderate-income (LMI) neighborhoods, when evaluating applications under the BMA. Under the regulations implementing the CRA, a bank's record of performance may be the basis for denying or conditioning approval of an application subject to the BMA. 12 CFR 25.29(d). Accordingly, the OCC considered the CRA PE of each bank involved in this transaction. Based on this review, the OCC has concluded that the banks' records of performance under the CRA are consistent with approval of this application.

1. Associated Bank's CRA Performance

Associated Bank's most recent CRA PE is dated July 27, 2015. The bank's overall rating was "satisfactory."² The major factors that supported this rating included: (i) the bank's good lending activity; (ii) the bank's overall good borrower income distribution of loans, as evidenced by its overall good distribution of home mortgage loans by income level of borrower and distribution of loans to businesses with different revenue sizes; (iii) its overall good amount of investments in its Assessment Areas (AA); and (iv) its adequate distribution of retail services in its AAs, including branches reasonably accessible to essentially all portions of the AAs, and a good level of CD services in its AAs.

2. Bank Mutual's CRA Performance

Bank Mutual's most recent CRA PE is dated January 28, 2013. The bank's overall CRA rating was "satisfactory."³ The major factors that supported this rating included: (i) lending levels that reflected good responsiveness to the overall needs of its AA as evidenced by its good distribution of lending among borrowers of different income levels, excellent distribution of small business loans to small businesses, and adequate distribution of home mortgage and small business loans throughout the overall AA; (ii) adequate level of qualified CD investments, grants, and donations that reflected responsiveness to credit and community economic development needs; and (iii) retail delivery systems that were accessible to all portions of its overall AA.

B. Convenience and Needs

Under the BMA, the OCC considers the convenience and needs of the communities to be served by the resulting bank.⁴ Though the banks' CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (November 2017), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis. The OCC has concluded that approval of this transaction is consistent with the convenience and needs of the communities that the resulting bank will serve.

² During the course of this evaluation, examiners reviewed Home Mortgage Disclosure Act (HMDA) reportable loans and small business loans for the period of January 1, 2011, through December 31, 2014. See CRA PE (July 27, 2015), Table 1. Community Development (CD) loans and services were evaluated from January 1, 2011, through July 27, 2015. The evaluation period for CD investments was July 1, 2011, through July 27, 2015. A copy of the CRA PE is available at <https://www.occ.gov/static/cra/craeval/jun17/23695.pdf>. Associated Bank received a "low satisfactory" rating on the lending test, a "high satisfactory" on the investment test, and a "low satisfactory" on the service test.

³ During the course of this evaluation, examiners reviewed the bank's HMDA and small business data for calendar years 2008 through 2012. CD investments and services were evaluated for the same period. A copy of the CRA PE is available at <https://www.occ.gov/static/cra/craeval/dec13/717079.pdf>. Bank Mutual received a "high satisfactory" rating on its lending and service tests, and a "low satisfactory" rating on its investment test.

⁴ See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

V. Public Comment and Analysis

A. Summary of Public Comments and Applicant's Response

The OCC received and considered three comment letters concerning the proposed transaction.⁵ Commenters expressed concerns about Associated Bank's CRA-related activities and possible effects of the proposed transaction, including criticism about Associated Bank's (i) HMDA-reportable lending and small business lending levels in certain AAs, including concerns about lending levels to LMI individuals, LMI geographies, and African American and Hispanic borrowers; (ii) plans to close or consolidate branches in connection with the transaction; and (iii) level of certain CD lending and investing activity. In addition, some commenters expressed concerns regarding the level of certain CD commitments Associated Bank made in its 2016 Community Commitment Plan (Plan).⁶ These commenters requested that the OCC condition approval of the proposed transaction on specific changes or updates to Associated Bank's Plan.⁷

The OCC also considered Associated Bank's responses to the comments. Associated Bank stated that it is firmly committed to complying with the letter and spirit of the CRA, highlighting its three-year Plan and other initiatives to enhance its CRA program. Associated Bank stated that it substantially met or exceeded each of the goals under the Plan for 2016 and expects to meet or exceed its 2017 and 2018 goals. Associated Bank also noted that the proposed transaction will bring together two banking organizations with highly compatible business models, risk management systems and customer centric cultures and orientations, and will enhance Associated Bank's financial ability and future prospects. Associated Bank further stated that its customers and Bank Mutual's customers will benefit from the combined bank's more extensive network of branches and ATMs, and that Bank Mutual's customers will benefit from an increased variety of business lending products and services, which are focused on small and medium-sized businesses.

B. Analysis

CRA Performance and Lending and Investment Activities

Commenters stated that Associated Bank has taken some positive steps toward more fully serving the credit needs of LMI individuals and communities since 2015, but that Associated Bank could do more to increase its level of HMDA-reportable and small business lending in LMI census tracts and to LMI borrowers in certain AAs in the bank's footprint.

⁵ The OCC also considered a comment letter that was submitted to the FRB in relation to the FRB's consideration of the related bank holding company transaction.

⁶ As part of its application materials, Associated Bank provided its Plan and Summary Report. Establishing a community commitment plan is not a requirement under the BMA or the CRA. See generally 12 USC 1828(c) and 12 USC 2901 *et seq.*

⁷ The OCC makes public comment letters received on applications available on its website. For additional details regarding the public comments, please visit <https://www.occ.gov/topics/licensing/public-comment/business-combination-or-merger-applications-comments.html>.

Associated Bank's CRA rating of "satisfactory" was derived from the Multistate Metropolitan Area and state ratings, with the state of Wisconsin receiving the greatest emphasis in the OCC's conclusions. Associated Bank received a "high satisfactory" for the lending test rating in the state of Wisconsin. Associated Bank's CRA PE notes one AA (the Chicago Multistate Metropolitan Statistical Area or MMSA) was rated "needs to improve" under the lending test. Associated Bank enhanced its CRA program and took certain other actions which are expected to result in improved ratings for its CRA performance in the Chicago MMSA. Since 2015, these enhancements include (i) opening two new branches and two new loan production offices in LMI and majority-minority census tracts in the Chicago MMSA; (ii) implementing a multi-cultural affordable lending program headed up by a team of managers and CRA loan originators; (iii) offering new affordable mortgage loan and down payment programs, including the Ultimate Community Affordable Real Estate Mortgage Loan, the Homeowner's Edge Loan Plus Program, the Program for Assisting Today's Homebuyer Grant Program, and participation in various other grant programs; (iv) increasing marketing efforts to include media focused on minority and other underserved communities; and (v) increasing community outreach and CD service activities with CD organizations in its footprint.

In addition, Associated Bank represented that it is focusing on increasing the percentage of its small business loans in LMI census tracts. Associated Bank described several initiatives underway to increase lending to businesses with revenues of \$1 million or less, businesses in LMI census tracts, as well as to minority- and women-owned businesses.

With regard to comments received on Associated Bank's CD lending and investment performance, as detailed in Associated Bank's 2015 CRA PE, the bank received an overall "high satisfactory" on the investment test. The major factor supporting this rating included the bank's overall level of CD investments within its AAs.⁸ Associated Bank also represented that it has increased its total qualified investments by 60 percent to \$241 million since its 2015 CRA PE. Associated Bank noted that it has participated in a range of investment activities, including investment in CRA-qualified Community Development Financial Institutions, New Market Tax Credits, Low Income Housing Tax Credits, Historic Tax Credits, and commercial real estate investments supporting neighborhood revitalization within its AAs. Further, a CRA evaluation of the resultant institution is scheduled in the normal course to begin in July 2018 that will consider CRA-related activities since the prior CRA evaluation.

Branch Closures and Consolidations

Commenters also expressed concerns regarding 36 branches that Associated Bank plans to consolidate or close as a result of the transaction,⁹ including concerns about a loss in services for the affected geographies. The OCC reviewed Associated Bank's branch closing policy and the factors it considers in identifying branches for consolidation or closure. The OCC also considered the information included in Associated Bank's application materials regarding the

⁸ Associated Bank represented that commenters appear to have omitted approximately \$375 million of Associated Bank's CD investments when analyzing the bank's CD investment activity remaining in place since July 27, 2015.

⁹ Associated Bank provided public notice regarding each of these branch actions, as well as detailed information regarding its plans as part of its application materials.

branch consolidations and closings and notes that in the 22 consolidations, the distance between the consolidating branch and the receiving branch is less than one mile, and in 20 of the 22 consolidations that distance is one-half mile or less. Of the 22 branch consolidations, only five are located in LMI census tracts and the receiving branches are located in the same LMI census tract as the consolidating branch. Of the 14 branch closings, 12 involve distances between the closing branch and the receiving branch of less than two miles and, of those, six involve distances of one-half mile or less. Of the 14 branch closings, only one branch, currently operated by Bank Mutual, is located in an LMI census tract. The receiving Associated Bank branch is less than one-half mile away and is located in the same LMI census tract as the closing Bank Mutual branch. In addition, the OCC will consider the resulting bank's branch network, as well as its branch distribution in LMI communities, at the CRA examination scheduled for July 2018.

Fair Lending

Commenters also raised concerns that some of the details Associated Bank included in its Plan were required as part of the 2015 Conciliation Agreement between the Department of Housing and Urban Development (HUD) and Associated Bank. As summarized in the Conciliation Agreement, based upon 2008-2010 HMDA data, HUD alleged that Associated Bank was disproportionately denying loan applications of African American and Hispanic applicants, and that Associated Bank underserved neighborhoods with significant African American or Hispanic populations despite demand for residential mortgage loans in those neighborhoods. In the Conciliation Agreement, Associated Bank denied any allegations of illegal discriminatory lending during the relevant period but entered into the agreement to implement initiatives that would increase its applications from and loan originations to minority borrowers and communities. In its response to the commenters, Associated Bank stated that it has implemented various initiatives to increase the number of home mortgage applications from, and loans to, African American and Hispanic/Latino borrowers, and that since 2015, these initiatives have resulted in increased lending to such borrowers, including an increase in the percentage of total HMDA-reportable loans originated in majority-minority census tracts in 2016 and the first half of 2017 when compared to its HMDA-reportable loan performance in 2013 through 2015.

The commenters also expressed concerns regarding Associated Bank's record of HMDA-reportable lending to minorities based on 2013 – 2015 HMDA data. The OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of an institution's lending activities and efforts. 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 in any geography by the bank, or in any AA by any affiliate whose loans are considered part of the bank's lending performance. Associated Bank's CRA PE noted that the OCC had not identified evidence of discriminatory or other illegal credit practices with respect to the bank during the evaluation period January 2011 through December 2014. In addition, in August 2016 as part of its ongoing supervision of the bank, the OCC performed an underwriting review of HMDA-

reported applications and noted no evidence of disparate treatment. Associated Bank will continue to be subject to the OCC's ongoing supervisory program to monitor fair lending risk and compliance with the Fair Housing Act and its implementing regulation.¹⁰

C. Summary of Consideration of Public Comments

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

VI. Consummation Requirements

OCC Central District Licensing Office staff must be advised in writing at least 10 days in advance of the desired effective date of the merger so that it may issue the necessary certification letter. If the transaction is not consummated within six months from the date of this letter, the approval shall automatically terminate unless an extension is granted.

The OCC will not issue a letter certifying consummation of the transaction until the following are received: (1) an original secretary's certificate for each bank certifying that the shareholders have approved the proposed transaction; (2) an original secretary's certificate for Bank Mutual certifying that a majority of the board of directors have agreed to the proposed transaction; (3) an executed merger agreement; and (4) documentation that any other required regulatory approval has been obtained.

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

A separate letter is enclosed requesting the bank's feedback on how we handled the application. If you have any questions, please contact Director for District Licensing Nancy M. Sundstrom by e-mail at nancy.sundstrom@occ.treas.gov or by telephone at (312) 360-8866, or Senior Licensing Analyst Carolina M. Ledesma by e-mail at carolina.ledesma@occ.treas.gov or by

¹⁰ 42 USC 3601 *et seq.*; 24 CFR Part 100. The Consumer Financial Protection Bureau has exclusive supervisory and primary enforcement authority with respect to Associated Bank's compliance with the Equal Credit Opportunity Act. 15 USC 1691 *et seq.*; 12 USC 5515.

Associated Bank, National Association, Green Bay, Wisconsin
OCC Control Number: 2017-CE-Combination-300262

telephone at (312) 360-8867. Please include the OCC Control Number on any correspondence related to this filing.

Sincerely,

signed

Karen Marcotte
Acting Deputy Comptroller for Licensing

Enclosure: Survey Letter

cc: Kevin Kane, Citizen Action of Wisconsin
Bethany Sanchez, Metropolitan Milwaukee Fair Housing Council
John Taylor, National Community Reinvestment Coalition