CRA Decision #221
November 2021

September 30, 2021

Patrick S. Brown
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067-1725

Re: Application to merge Pacific Mercantile Bank, Costa Mesa, California, with and into Banc of California, National Association, Santa Ana, California
OCC Control No.: 2021-WE-Combination-321198 Charter Number 25080

Dear Mr. Brown:

The Office of the Comptroller of the Currency (OCC) hereby approves the application to merge Pacific Mercantile Bank, Costa Mesa, California (Pacific Mercantile) with and into Banc of California, National Association, Santa Ana, California (Banc of California). This approval is granted based on a thorough review of all information available to the OCC, including commitments and representations made in the application and during the application review process.

I. Background and the Transaction

Banc of California is a $7.9 billion national bank with its main office in Santa Ana, California and branches in California. Banc of California is a wholly owned subsidiary of Banc of California, Inc. (BoC, Inc.), a Maryland corporation and registered bank holding company.

Pacific Mercantile is a $1.6 billion California-chartered state member bank with its main office in Costa Mesa, California and branches in California. Pacific Mercantile is a wholly owned subsidiary of Pacific Mercantile Bancorp (PMB), a California corporation and registered bank holding company.

BoC, Inc. submitted an application with the Federal Reserve Bank of San Francisco to acquire PMB pursuant to an Agreement and Plan of Merger by and between BoC, Inc. and PMB dated March 22, 2021. Pursuant to the Agreement and Plan of Merger, PMB will merge with and into BoC, Inc. with BoC, Inc. being the surviving company. Post-merger, Pacific Mercantile will become a wholly owned subsidiary of BoC, Inc. Promptly after the merger of PMB and BoC, Inc., Pacific Mercantile will merge with and into Banc of California, with Banc of California continuing as the surviving institution.

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

II. Legal Authority

Banc of California applied to the OCC for approval to merge Pacific Mercantile with and into Banc of California under 12 USC 215a and the Bank Merger Act (BMA), 12 USC 1828(c). Section 215a authorizes mergers between national banks "located within the same State." The main offices and branches of both Banc of California and Pacific Mercantile are located in California.

The BMA requires the OCC to consider, among other matters, whether the proposed transaction would have significant anticompetitive effects. The agency must also consider the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and the risk of the transaction to the stability of the United States banking or financial system. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of the banks in combating money laundering activities. 12 USC 1828(c)(11). The OCC has considered these factors and found them consistent with approval.

Banc of California seeks approval to operate as branches the main office and branches of Pacific Mercantile. These branch acquisitions are authorized under 12 USC 36(b)(2).

III. Community Reinvestment Act and Convenience and Needs

In evaluating this proposed transaction, the OCC has carefully considered (i) Banc of California's most recent CRA performance evaluation (PE); (ii) information available to the OCC as a result of its supervisory responsibilities; (iii) written public comments; and (iv) information Banc of California provided in response to the public comments.[1]

A. Community Reinvestment Act

The OCC considers the filer's CRA record of performance in helping meet the credit needs of its communities, including low- or moderate-income (LMI) neighborhoods, when evaluating applications under the BMA, 12 USC 1828(c).[2] Accordingly, the OCC considered Banc of California's CRA PE. Based on this review, the OCC concluded that Banc of California's record of CRA performance is consistent with approval of the application.

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[1] We also considered materials that Banc of California submitted to the Federal Reserve Bank of San Francisco in connection with the related holding company application.
[2] See 12 CFR 5.33(e)(1)(iii)(A); see also 12 CFR 25.02(a)(3).

In the most recent CRA PE dated October 22, 2018 (2018 CRA PE),[3] Banc of California received an overall CRA rating of "Satisfactory." Banc of California received a rating of "High Satisfactory" for both the lending test and service test and a rating of "Outstanding" for the investment test. The major factors supporting this rating include: (i) good responsiveness to the credit needs of the Los Angeles-Long Beach-Anaheim Metropolitan Statistical Area (MSA) (Los Angeles MSA) and the San Diego-Carlsbad MSA (San Diego MSA); (ii) overall excellent geographic distribution of home mortgage loans originations/purchases and good distribution of small business loan originations/purchases; (iii) overall adequate borrower distribution of home mortgage loan originations/purchases; (iv) excellent level of community development (CD) loans in both the Los Angeles MSA and the San Diego MSA; (v) an excellent level of qualified CD investments in both the Los Angeles MSA and the San Diego MSA; (vi) delivery systems that are reasonably accessible to essentially all portions of the Los Angeles MSA and the San Diego MSA; and (vii) an excellent level of CD services that were responsive to the CD needs in both the Los Angeles MSA and the San Diego MSA.

B. Convenience and Needs

Under the BMA, the OCC also considers the convenience and needs of the communities served by the resulting bank.[4] Though the bank's CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (November 2017), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis.[5] The OCC has concluded that approval of the transaction is consistent with the needs of the communities that the resulting bank will serve.

IV. Public Comments and Analysis

A. Summary of Public Comments and Analysis

The OCC received 49 public comments concerning the proposed transaction. A majority of the comments received support the merger.[6] However, a substantial portion oppose the merger. The comments opposing the merger were largely identical and raised the same concerns, except that

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[3] The OCC evaluated Banc of California as a large institution. Examiners reviewed Home Mortgage Disclosure Act (HMDA) reportable home mortgage loans and small loans to businesses for the period January 1, 2015, to December 31, 2017. Banc of California does not originate small loans to farms. Examiners reviewed community development (CD) loans, qualified investments, and CD and retail services for the period May 1, 2015 through 2017. A copy of the 2018 CRA PE is available at https://www.occ.gov/static/cra/craeval/May21/25080.pdf.
[4] See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).
[5] *Comptroller's Licensing Manual*, Public Notice and Comments (November 2017).
[6] The OCC is aware that Banc of California requested support from grantees but believes that the range of comments received reflects a balance of views. The OCC has carefully considered all comments, including the concerns raised by commenters opposing the merger.

one joint comment letter also included additional details and concerns. This comment letter was later withdrawn.[7] Commenters stated that Banc of California has not established it will meet the convenience and needs of the communities impacted by the merger and specifically raised concerns with: (i) the effect of Banc of California's community development (CD) and multifamily lending on housing affordability and Banc of California's declining level of CD lending; (ii) Banc of California's fee income as compared to its philanthropic contributions; (iii) the proportion of Banc of California's mortgage loan originations and purchases that come from LMI areas and majority minority areas; (iv) Banc of California's branch closings and its original plan to close two additional branches if the merger is approved; and (v) Banc of California's level of management diversity and diverse spending.

All opposing commenters requested that if the OCC does not deny the application, it extend the comment period to allow additional time to conduct research and further assess the concerns they noted along with Banc of California's CRA activity and plans. Notwithstanding their concerns, all the commenters opposing the merger expressed appreciation for Banc of California's responsiveness to them about their comments.

Community Development and Multifamily Lending

Commenters noted that over 50% of Banc of California's CD lending appeared to be for housing that is not restricted to ensure affordability for LMI residents. Commenters argued that this indicates that most of Banc of California's CRA lending is a result of its normal commercial real estate business and not a result of a CRA program. Commenters stated that this type of activity does not have a clear public benefit and expressed concern that without safeguards, like enhanced due diligence procedures, it may result in displacement of low-income communities and communities of color.

In its response to the public comments, Banc of California pointed to its record of CD lending that supports affordable housing. In particular, Banc of California asserted that 45%, or $287 million, of its $637 million in CD affordable housing loans from 2018 through 2020 supported properties that accept Section 8 housing vouchers, have rent control restrictions, or have units with deed restrictions to ensure future affordability. Banc of California stated that its CD affordable housing loans included loans for over 5,700 units that met the U.S. Department of Housing and Urban Development's affordable rent calculations. Further, Banc of California indicated that, although it does not have complete data regarding post-origination rents, it does not seek CRA consideration for CD loans if it determines during the underwriting process that a property owner intends to increase rents to meet its financial obligations under the loan.

Banc of California explained that its planned investment activity includes investments in a variety of entities engaged in the development of affordable housing for LMI individuals, small busines financing and development, and the revitalization and stabilization of LMI geographies.

[7] This comment letter was withdrawn after the commenters and the Banc of California reached an agreement related to the bank's future CRA activities.

Further, Banc of California represented that it invests and will continue to invest, as appropriate, in: (1) targeted mortgage-backed securities that support affordable housing; and (2) qualifying tax credit vehicles, including low-income housing tax credit, historic rehabilitation tax credit, and new markets tax credit programs.

Banc of California also noted since 2018, it has invested over $100 million with companies that support the creation or retention of affordable housing in its assessment areas. Banc of California asserted that a commenter's statement that its CD lending had declined during the period from 2018 to 2020, without additional context, was misleading. Banc of California noted that it had reduced its entire balance sheet during the same time period from $10.6 billion in 2016 to $7.9 billion in 2020 and that CRA expenditures have kept pace.

Banc of California's most recent CRA PE noted an excellent level of CD lending and qualified CD investments in both the Los Angeles MSA and the San Diego MSA. Its CD lending for the period January 1, 2018, to December 31, 2020, will be reviewed in the upcoming evaluation.

<u>Fee Income as Compared to Charitable Contributions</u>

Commenters stated that Banc of California's fee income exceeded its philanthropic giving in 2020. Commenters said that Banc of California assessed $585,170 in overdraft fees in 2020, including during the Covid-19 pandemic while other banks were reconsidering overdraft fees. Furthermore, although commenters expressed appreciation for Banc of California's origination of 2,075 Paycheck Protection Program (PPP) loans, they noted that Banc of California had not committed to devoting fees earned on these loans to philanthropic activities. Commenters stated that the fees Banc of California earned on PPP loans and Banc of California's $300 million in annual revenue for 2020 dwarfed Banc of California's philanthropy.

In response to the public comments, Banc of California asserted that its overdraft fees as a percentage of income is far below industry average. Additionally, Banc of California stated that, as a part of its pandemic response, it lowered the maximum number of overdraft fees charged in a single day from five to two. Banc of California also noted that it offers an overdraft protection plan, which may help certain customers minimize overdraft fees. With respect to commenters' assertions about the fee income Banc of California earned on PPP loans, Banc of California indicated that it invested considerable time and resources in setting up and administering its PPP program. It noted that while some of the largest banks have committed to donate some or all their PPP fees, its choice to retain such fees is consistent with what it believes to be the approach of the majority of the banking industry.

Banc of California asserted that it remains committed to devoting significant resources to contributions and plans to increase philanthropic contributions in 2021 and 2022. In response to the Covid-19 pandemic, Banc of California noted it worked closely with multi-family credit clients to provide support, including loan forbearance. Banc of California also stated that community organizations that combat homelessness and provide supportive and transitional housing are the primary focus of its community involvement and support and that intends to continue to place a heavy emphasis on these types of community support efforts. Additionally, Banc of California indicated that it supports organizations that provide financial literacy programing, including by hosting those organizations, and, through its CD efforts, supports developers of color by investing in nonprofit housing and organizations led by people of color.

The CRA does not require Banc of California to engage in any particular level or type of philanthropic activity. All of its efforts to support its communities that receive consideration under the CRA will be reviewed in the upcoming CRA evaluation.

Mortgage Loan Purchases

Commenters expressed concern that the bulk of Banc of California's mortgage loan purchases are in White and upper-income areas. For example, for the first quarter of 2020, commenters note that Banc of California originated two loans in the Los Angeles MSA to upper-income White borrowers in upper-income, White census tracts and purchased 50 loans, 82.7% of which were in upper-income census tracts and 80% of which were in White neighborhoods.

With respect to Banc of California's HMDA-reportable lending, the OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution engaged in lending discrimination, nor do they reflect the full range of an institution's lending activities and efforts. However, disparities in mortgage lending that are correlated with prohibited basis characteristics are of concern to the OCC, and the OCC monitors HMDA data reported by institutions it regulates to determine those institutions that exhibit increased fair lending risk. Banc of California is subject to the OCC's ongoing supervisory program to monitor fair lending risk and compliance with the Equal Credit Opportunity Act, Fair Housing Act, and their implementing regulations.[8]

Further, as previously noted, on its 2018 CRA PE, the OCC rated Banc of California's performance on the lending test "High Satisfactory." The OCC found that Banc of California's geographic distribution of home mortgage loan originations/purchases was "Excellent" overall and in both the Los Angeles MSA and the San Diego MSA. Banc of California's borrower distribution of home mortgage loan originations/purchases was "adequate" overall and in both the Los Angeles MSA and the San Diego MSA. A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices.[9] In determining the effect of evidence of discriminatory or illegal credit practices in a bank's CRA lending activities on the bank's evaluation and assigned CRA rating, the OCC considers the following factors: (1) the nature, extent, and strength of the evidence of the practices; (2) the policies and procedures that the bank has in place to prevent the practices; (3) any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and (4) any other relevant information.[10] Any discriminatory or other illegal credit practices that

[8] 15 USC 1691 *et seq.*; 12 CFR Part 1002; 42 USC 3601 *et seq.*; 24 CFR Part 100.
[9] 12 CFR 25.17.
[10] 12 CFR 25.17(b).

were identified after the issuance of the previous CRA PE will be considered in the upcoming CRA evaluation.

In response to commenters' concerns regarding the demographics associated with Banc of California's 2020 loan purchases, Banc of California confirmed that it exited the single-family residential mortgage origination business in 2018 and stopped originating single family mortgage loans in 2019. Further, after Banc of California sold its primary consumer residential division, Banc Home Loans, in spring of 2017, it was subject to a three-year non-compete provision that restricted Banc of California's ability to originate some types of loans, including Federal Housing Administration, Veterans Affairs, U.S. Department of Agriculture, and government-sponsored enterprise loans.

Branching

Commenters expressed concern that Banc of California has been closing branches in recent years, including in LMI and majority minority areas. Specifically, commenters stated that Banc of California has closed four branches between 2017 and 2020 and that two of these branches were in LMI areas and one was in a neighborhood of color. Commenters noted that Banc of California's application stated that they plan to close two additional branches if the merger is approved.

In response to the comments, Banc of California stated that it closed or consolidated eight branches between 2018 and 2020, but that three of the branches were relocated in the same neighborhood and that only one of the eight closed branches was in an LMI census tract. Banc of California stated that during the same time period, it opened four new branches, two of which were in majority minority census tracts. Banc of California also asserted that 24% of its branches in Los Angeles County and Orange County are in LMI census tracts and that 48% of those branches are in majority minority census tracts. Banc of California also provided an update on its plans to close or consolidate one branch rather than two branches in connection with the merger. Furthermore, Banc of California indicated that the branch it intends to consolidate operates in close proximity to an existing branch, which will serve the clients of the combined institution.

Diversity

Commenters commended Banc of California for sharing its diversity data but expressed disappointment regarding the low number of persons of color and women on its Board and in senior level management positions. They also expressed concern with Banc of California's tracking of diverse spending and the low percentage of Banc of California's procurement activities in California that benefit certified Minority, Women, and Disadvantaged Business Enterprises.

In response to the public comments, Banc of California asserted that it promotes diversity internally, including an employee-led diversity committee and that it employs a majority women employee base, including three senior members of its executive team. Banc of California stated it is committing resources to further invest in sourcing and developing a diverse team and leadership base. Banc of California also asserted supplier diversity is an important priority and that it intends to expand its supplier diversity work. Additionally, Banc of California stated that it intends to increase its efforts to track and support ethnic media spending.

CRA Plan and Suggested Activities and Programs

Commenters stated that Banc of California has not established that it will meet the convenience and needs of communities. All commenters stated that they had previously provided Banc of California with specific recommendations for how it could better meet community credit needs, but that Banc of California declined to commit to any of these recommendations. Commenters included these recommendations in their letters. Examples included: (i) opening of two new branches in minority neighborhoods; (ii) increasing in small business lending; (iii) developing of a small business Special Purpose Credit Program (SPCP); (iv) developing a formalized referral program for small business loan declinations; (v) setting goals for diversity business spending and board diversity; (vi) purchasing LMI mortgages; (vii) increasing CD lending for affordable housing; (viii) increasing the ratio of CD investments to CD lending; and (ix) increasing annual grants as compared to deposits.

As previously noted, on its 2018 CRA PE, the OCC assigned Banc of California an overall rating of “Satisfactory” and rated it “High Satisfactory” for both the lending test and service test and “Outstanding” for the investment test. Although under the CRA the OCC evaluates a bank’s record of meeting the credit needs of its entire community, the CRA does not require banks to engage in any particular type of activity or to enter agreements with third parties.[11]

In response to the public comments, Banc of California stated that, after the merger, its greater resources will allow the combined institution to serve the convenience and needs of its communities, including Pacific Mercantile’s community. Banc of California noted that Pacific Mercantile’s customers would benefit from Banc of California’s small business lending program that offers loans to small businesses in amounts as low as $10,000. Banc of California also highlighted its CRA activities since its last CRA PE. In particular, Banc of California represented that from 2018 to 2020, it made over $104 million in CD investments, more than $1.2 billion in CD lending, over $225 million in small business CRA loans in California, its employees contributed nearly 5,000 volunteer and service hours, provided $2.4 million in grants, donations and sponsorships to community programs, including LMI services, economic development and affordable housing organizations.

In response to the specific actions and activities commenters recommended, Banc of California stated that it is eager to receive constructive input from its communities and will continue its active dialogue with community groups as it develops its own comprehensive CRA plan. Banc of California stated that it has maintained a focus on affordable housing in its CRA investment

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[11] “Interagency Questions and Answers Regarding Community Reinvestment,” 81 Fed. Reg. 48,506 (July 25, 2016) (Q&A § __.29(b) -2).

portfolio and has engaged in meaningful affordable housing investments, including $44 million to support affordable housing via Low Income Housing Tax Credit, Preservation and Affordable Housing funds.

Banc of California's response to the public comments also emphasized its commitment to Small Business Administration lending. Banc of California stated that in 2021 year-to-date, over 50% of its small business loans, measured by number of units, have been in amounts less than $150,000. Banc of California represented that it continues to see an increase in small business loans to businesses with less than $1 million in revenue, up to 39% year-to date, and that it expects to continue to grow such loans as a percentage of all small business loans in the coming years. In response to the suggestion that Banc of California develop a formalized referral program for small business loan declinations, Banc of California stated that its relationship managers work one-on-one with small business clients that are not eligible for its products and in some cases refer them to other organizations that may better suit their needs. Banc of California asserted that it intends to consider options that would facilitate and enhance these efforts going forward, including developing a formalized referral program. Banc of California also stated that it is striving to increase its participation in Small Business Administration and state guaranteed loan programs and is considering the possibility of developing a SPCP program in the future.

B. Requests for Extension of Comment Period and Public Hearing

All opposing commenters also requested that if the OCC does not deny the application, it extend the comment period to allow additional time to conduct research and further assess the concerns they noted along with Banc of California's CRA activity and plans. The standard that applies to determine whether to extend the comment period is set forth in 12 CFR 5.10(b)(2). The OCC may extend a comment period if a person requesting additional time satisfactorily demonstrates that additional time is necessary to develop factual information that the OCC determines is needed for the filing, or the OCC determines that other extenuating circumstances exist.[12] After careful consideration, the OCC determined not to extend the public comment period. None of the reasons set forth in 12 CFR 5.10(b)(2) as justification for extending the comment period were evident in connection with this application.

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 Banc of California and Pacific Mercantile, and the public comments on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

[12] See 12 CFR 5.10(b)(2)(ii), (iii).

V. Conclusion

The Western District Licensing Office must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval.

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

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
- An executed merger agreement.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.

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

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

If you have any questions, contact Director for District Licensing Yoo Jin Na at (202) 649-6335 or yoojin.na@occ.treas.gov.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing