



**CRA Decision #194
November 2018**

October 12, 2018

Michael J. Messaglia, Partner
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204

Subject: Application to merge KleinBank, Chaska, Minnesota with and into Old National Bank, Evansville, Indiana Charter No: 8846
OCC Control No. 2018-CE-Combination-304368

Dear Mr. Messaglia:

The Office of the Comptroller of the Currency (OCC) hereby approves the application to merge KleinBank, Chaska, Minnesota (KleinBank) with and into Old National Bank, Evansville, Indiana (Old National). Old National will be the resulting bank and is authorized to retain its branches and to retain and operate as branches the main office and branches of KleinBank.

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. The Transaction

Old National is a \$17.4 billion national bank headquartered in Evansville, Indiana, and operates 193 branches in Indiana, Illinois, Kentucky, Michigan, Minnesota, and Wisconsin. Old National is a wholly-owned subsidiary of Old National Bancorp (ONB), an Indiana corporation and a bank holding company that has elected to be a financial holding company under the Bank Holding Company Act of 1956, as amended (the BHC Act).

KleinBank is a \$1.9 billion Minnesota-chartered non-member bank headquartered in Chaska, Minnesota, and operates 21 branches located in the state of Minnesota. KleinBank is a wholly-owned subsidiary of Klein Financial, Inc. (KFI), a Minnesota corporation and a bank holding company under the BHC Act.

The proposed merger transaction is related to an application filed with the Federal Reserve Bank of St. Louis by ONB to acquire KFI pursuant to an Agreement and Plan of Merger Agreement (Merger Agreement). The merger will take place in two steps as follows:

- 1) Pursuant to the Merger Agreement, KFI will merge with and into ONB, with ONB continuing as the surviving entity (Parent Merger).
- 2) Immediately following the consummation of the Parent Merger, KleinBank will merge with and into Old National, with Old National continuing as the surviving institution (Merger).

The OCC and the Federal Reserve Bank of Saint Louis received comments regarding the proposed mergers. 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 served. The public comments are discussed under the Public Comments and Analysis section below.

II. Legal Authority

Old National applied to the OCC for approval to merge KleinBank with and into Old National under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal), 12 USC 1831u, which authorizes mergers between insured banks with different home states, 12 USC 215a-1, and the Bank Merger Act (BMA), 12 USC 1828(c).

A. Riegle-Neal Considerations

Mergers conducted pursuant to Riegle-Neal are subject to the requirements in 12 USC 1831u(a)(5) and 1831u(b). 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 CRA compliance; and (v) adequacy of capital and management skills. The OCC has considered these factors and determined that the merger satisfies all applicable requirements in Riegle-Neal.

Additionally, upon consummation of the Merger, Old National proposes to retain its existing main office in Evansville, Indiana, and to retain its own branches in Indiana, Illinois, Kentucky, Michigan, Minnesota, and Wisconsin as well as to retain as branches the main office and branches of KleinBank, all of which are located in Minnesota. Retention and operation of KleinBank's main office and branches by Old National as branches of Old National is legally permissible under 12 USC 1831u(d)(1), and 12 USC 36(d).

B. Bank Merger Act

The OCC also reviewed the proposed merger transaction under the criteria of the 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 United States banking or financial system. 12 USC 1828(c)(5). The OCC considered these factors and found them consistent with approval of the application.

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. The Community Reinvestment Act and Convenience and Needs

In evaluating this proposed transaction, the OCC carefully considered (i) Old National's and KleinBank's most recent CRA performance evaluations (PE); (ii) information available to the OCC as a result of its supervisory activities; (iii) written public comments; and (iv) information Old National provided in response to the 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.

i. Old National's CRA Performance

Old National's most recent CRA PE, prepared by the OCC, is dated February 13, 2017. Old National's overall rating was "satisfactory."¹ The major factors that supported this rating included Old National's: (i) good geographic distribution of loans; (ii) good distribution of loans by income level of the borrower; (iii) overall excellent level of qualified investments that were generally responsive to community needs; and (iv) branches which were overall accessible to people and geographies of different income levels.

¹ The OCC evaluated Old National for CRA purposes as a large bank. The evaluation period for the lending test, investment test, and service test was January 1, 2013, through December 31, 2015. Old National received a "high satisfactory" rating on the lending and service tests and an "outstanding" rating on the investment test. Old National's CRA PE is available at <https://www.occ.gov/static/cra/craeval/jun18/8846.pdf>.

ii. KleinBank's CRA Performance

KleinBank's most recent CRA PE, prepared by the Federal Deposit Insurance Corporation (FDIC), is dated November 19, 2015.² KleinBank's overall rating was "satisfactory."³ The major factors that supported this rating included KleinBank's: (i) lending levels, which reflected good responsiveness to assessment area (AA) credit needs; (ii) high percentage of loans made in the bank's AAs and adequate geographic distribution of lending through the AAs given comparable demographic information; (iii) good distribution of loans by income level of the borrower and businesses and farms of different sizes given the product lines offered by the bank; (iv) relatively high level of community development (CD) loans; (v) good record of serving the credit needs of the most economically disadvantaged areas of its AAs, low-income individuals, and small businesses, consistent with safe and sound banking practices; (vi) limited use of innovative or flexible lending practices; (vii) poor level of qualified investments and grants, particularly those that are not routinely provided by private investors; (viii) poor responsiveness to credit and community economic development needs; (ix) rare use of innovative or complex investments to support CD initiatives; (x) adequate level of CD services; (xi) delivery systems that were reasonably accessible to essentially all portions of the bank's AAs; (xii) opening and closing of branches did not adversely affect the accessibility of its delivery systems, particularly in LMI geographies and to LMI individuals; and (xiii) services (including where appropriate, business hours) did not vary in a way that inconvenienced portions of the AAs, particularly LMI geographies and LMI individuals.

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 resulting 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 After the issue date of KleinBank's 2015 CRA PE, the bank entered into a settlement agreement with the U.S. Department of Justice (DOJ), discussed below.

³ The FDIC evaluated KleinBank for CRA purposes as a large bank. The evaluation period for the lending test, investment test, and service test was April 8, 2013, through November 19, 2015. KleinBank received a "high satisfactory" rating on the lending test, a "needs to improve" rating on the investment test, and a "low satisfactory" rating on the service test. KleinBank's CRA PE is available at <http://share/sites/CC/LICA/CRA%20Committee%20%20HQ/Cases/2018%20Cases/Old%20National%20Bank%202018-CE-Combination-304368/CRA%20Public%20Evaluations/11-19-2015%20KleinBank%20Public%20Evaluation.pdf>.

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

IV. Public Comments and Analysis

A. Summary of the Public Comments and Applicant's Response

The OCC considered two public comment letters concerning the proposed transaction. One comment letter was directed to the OCC and, citing 2012 and 2016 Home Mortgage Disclosure Act (HMDA) data, expressed concerns about the volume of Old National's home mortgage lending to African Americans in the Evansville, Indiana (Evansville) Metropolitan Statistical Area (MSA)⁵ and the Indianapolis-Carmel, Indiana MSA (Indianapolis MSA). The commenter also questioned whether Old National may be excluding applicants on the basis of race and ethnicity using prescreening in the Evansville MMSA and requested an investigation. In addition to these lending related concerns, the commenter raised concerns with Old National's history of closing branches that were acquired through the purchase of smaller institutions or selected office locations. The commenter requested that the proposed transaction should not be approved and that evidentiary hearings be held.

The OCC also considered a comment letter directed to the Federal Reserve Bank of St. Louis on the related holding company application, submitted on behalf of three commenters. This letter requested additional information about Old National's CRA lending and development goals for Hennepin County, Minnesota (Hennepin County) and, in particular, how Old National intends to comply with the terms of a May 8, 2018, settlement agreement between KleinBank and the DOJ (KleinBank Settlement) related to allegations of redlining.⁶ These commenters also requested that the proposed transaction be approved subject to a condition requiring Old National to develop a forward-looking community benefits plan demonstrating a commitment to LMI families, communities of color, and small businesses for Hennepin County developed in collaboration with local community organizations. The commenters asserted that community benefits plans are required in circumstances, such as those presented by the proposed transaction, in which redlining is a concern and a bank is a recent entrant into the market.

The OCC considered Old National's responses to the concerns raised by the commenters. Old National stated that it is committed to strengthening the communities it serves. Old National further stated that CRA and CD are key values of the bank. Old National provided responses to the specific concerns raised by the commenters, which are addressed in the analysis below.

⁵ The commenter expressed concerns regarding the Evansville MSA; however, Old National's 2017 CRA PE assesses the bank's record of performance in the Evansville-Henderson IN-KY Multistate Metropolitan Statistical Area (MMSA). For purposes of clarity, this letter will refer to this MMSA as the Evansville MMSA.

⁶ The KleinBank Settlement is available at <https://www.justice.gov/crt/case-document/file/1061061/download>.

B. Analysis

Home Mortgage Lending

As noted above, a commenter expressed concerns regarding Old National's home mortgage lending activities, particularly involving conventional home purchase loans, refinance loans, and home improvement loans, in the Evansville MMSA and the Indianapolis MSA. Disparities in mortgage lending that are correlated with prohibited basis characteristics are of concern to the OCC, and the OCC monitors HMDA data reported by the institutions it regulates to determine those institutions that exhibit heightened risk. Old National is and 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. 42 USC 3601 *et seq*; 24 CFR Part 100.⁷ However, the OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data for the period in question do not take into consideration borrower creditworthiness, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of an institution's lending activities and efforts.⁸

The OCC also considers banks' HMDA data in the context of CRA evaluations. Old National's 2017 CRA PE indicates that the bank received an overall "outstanding" rating and "outstanding" lending, investment, and service test ratings in the Evansville MMSA based on a consideration of retail and CD. In the Evansville MMSA, the OCC concluded that Old National's home mortgage lending activity was good, the geographic distribution of home mortgage loans was adequate, and the borrower distribution of home mortgage loans was good. Old National's 2017 CRA PE also indicates that the bank received a "high satisfactory" lending test rating in the state of Indiana, which was primarily based on the bank's performance in the Indianapolis MSA and the Terre Haute MSA. In the Indianapolis MSA, the OCC concluded that Old National's home mortgage lending activity was good, the geographic distribution of home mortgage loans was adequate, and the borrower distribution of home mortgage loans was excellent.

Pursuant to 12 CFR 25.28(c), in determining a national bank's CRA rating, the OCC considers evidence of discriminatory or other illegal credit practices in any geography by the bank, or in any assessment area by an affiliate whose loans have been considered as part of the bank's lending performance. Old National's 2017 CRA PE states that the OCC found evidence of a violation of section 5 of the Federal Trade Commission Act involving the bank's failure to initially issue promised gift cards as part of a loan promotion for which the bank has completed restitution. The CRA PE did not note any additional public information regarding non-

⁷ The Bureau of Consumer Financial Protection has exclusive supervisory and primary enforcement authority with respect to Old National's compliance with the Equal Credit Opportunity Act. 15 USC 1691 *et seq*; 12 USC 5515.

⁸ This applies to the HMDA data collected during the timeframe mentioned in the public comment. HMDA data collected beginning in 2018 will include information on some of these variables for lenders that made 500 or more closed-end mortgage loans or 500 or more open-end lines of credit in at least one of the two preceding calendar years.

compliance with statutes and regulations prohibiting discriminatory or other illegal credit practices with respect to this institution.

With regard to the commenter's concerns regarding Old National's home mortgage lending to African Americans and Hispanic borrowers, the bank pointed to its response to concerns about its 2012 home mortgage lending activity in connection with two previous corporate transactions.⁹

With respect to 2016 home mortgage lending activity, Old National preliminarily stated that the number of loans made in one year versus another year does not suggest any lending patterns without considering other information, such as market share data. Old National also provided an analysis of its 2016 HMDA data comparing the number of home mortgage loans it made to aggregate data for all mortgage lenders and market share data in each MSA and for each type of home mortgage loan commented on by the commenter. Based on this analysis, Old National noted that in some instances it exceeded the number it would have been expected to make based on its market share and in some instances it made slightly fewer loans than expected. Old National represented that its 2016 home mortgage denial rates for all minorities are on par with the denial rates of the top lenders in the Evansville MMSA and the Indianapolis MSA.

In addition to analyzing its 2016 HMDA data, Old National stated that it is committed to the fair treatment of all its customers and potential customers and maintains the highest standards of corporate responsibility by providing consistent, objective, unbiased treatment of all customers. Old National represented that it takes measures to ensure that this policy is applied consistently and continuously through all aspects of its credit operations, including product design, marketing and advertising, loan application, underwriting, pricing, collection, servicing and loss mitigation activities. Old National also provided information regarding the measures that it takes to prevent prescreening, discouragement, or exclusion of credit applications on a prohibited basis. Old National described its Fair Lending Program and represented that fair lending training is completed annually. Old National represented that its Fair Lending Program will be used to manage compliance following consummation of the proposed transaction.

Branching

One commenter raised concerns regarding Old National's history of branch closings. Old National represented that it conducts a comprehensive and thorough analysis of the impact that closing branches (or banking centers) has on the community, as well as the impact from a CRA perspective.¹⁰ Old National stated that it does not anticipate that any of the existing branches of KleinBank or Old National will be closed as a result of the proposed transaction.

⁹ The two previous corporate applications mentioned were Old National's applications to merge Tower Financial Corporation and United Bank & Trust with and into itself. As noted, in deciding these applications, the OCC considered comments related to concerns about Old National's HMDA lending, and determined that the information provided by Old National was consistent with approval of the applications. See <https://www.occ.treas.gov/topics/licensing/interpretations-and-actions/2014/crad157.pdf> and <https://www.occ.gov/topics/licensing/interpretations-and-actions/2014/crad159.pdf>.

¹⁰ A national bank must comply with the requirements of 12 USC 1831r-1 with respect to procedures for branch closings. 12 CFR 5.30(j).

Convenience and Needs and Old National's CRA Plans

One comment letter urged that approval of the application be conditioned upon Old National's development of a community benefits plan. Pursuant to 12 CFR 225.24(a)(2)(iii), which applies to proposals submitted to the Board of Governors of the Federal Reserve System by bank holding companies seeking to engage in nonbanking activities, covered transactions require a "statement of the public benefits that can reasonably be expected to result from the proposal." In reviewing Old National's application to merge KleinBank with and into itself, the OCC applied the convenience and needs standard as required under 12 USC 1828(c)(5). In response to the comment, Old National asserted that a community benefits plan is not necessary and distinguished between the facts and circumstances of the proposed transaction and prior decisions involving other banks that were conditioned on the development of a CRA plan.

In its application, Old National represented that the proposed transaction will result in KleinBank's branches becoming part of Old National's branch network. Old National asserted that its expanded branch network will provide benefits to current KleinBank consumers, commercial, and trust customers by enabling them access to sophisticated products and services not presently or widely offered by KleinBank. Old National's application further describes the programs, products, and activities offered by Old National that will meet the needs of its communities under the CRA, including programs and activities related to affordable housing, economic development, and financial literacy. Old National represented that it offers products with flexible terms and that use government enhancements. In addition, Old National provided information regarding CRA-qualifying activities it has engaged in since conclusion of its 2017 CRA PE, including representations regarding: (i) \$246.7 million in CD lending; (ii) increasing its qualified investment goal to \$131 million; (iii) \$2.8 million in donations targeted to programs and initiatives that support LMI populations and areas as well as small businesses; and (iv) 6,100 hours of CD service eligible activities in 2017.

KleinBank Settlement Agreement

One comment letter raised concerns with regard to the KleinBank Settlement. In its response to commenters' concerns, Old National stated that it is committed to ensuring that the terms of the KleinBank Settlement are complied with and the needs of the communities served by KleinBank are met. Old National also provided a status update on the KleinBank Settlement requirements as the commenter requested. Specifically, Old National represented that KleinBank is in the process of (i) formalizing a residential loan financial assistance program and building a tracking system to document monies spent by geographic location (scheduled completion was September 30, 2018); (ii) providing fair lending training to all employees and officers (fair lending products and services training is conducted quarterly for all residential loan originators, all employees were assigned a "Fair Service for All" online course in the first quarter of 2018, and all employees were assigned a "Fairness in Housing and Lending" online course in the third quarter of 2018); and (iii) negotiating a lease for a full-service branch office in a majority-minority census tract (target October 31, 2018). Further, Old National represented that KleinBank has (i) completed making a \$300,000 advertising, outreach, financial education, and credit repair commitment and submitted its proposal for related initiatives to the DOJ (completed August 8, 2018); and (ii)

hired a Vice President-Community Development Officer (completed April 2017). Finally, Old National discussed additional initiatives that it intends to implement, including (i) hiring a CD & Financial Empowerment Officer; (ii) hiring a Mortgage Originator with a focus on solicitation and origination of loans in majority-minority census tracts; and (iii) conducting community outreach sessions in Hennepin County to better understand community needs, to share information regarding Old National's programs and services, and to foster relationships.

Old National affirmed that it is obligated to comply with the KleinBank Settlement. Following consummation of the proposed transaction, the OCC expects that Old National will cooperate fully with the DOJ and that Old National will ensure that the resulting bank fulfills all outstanding obligations of the KleinBank Settlement.

C. Request for Public Hearing

A commenter requested that the OCC hold a public hearing on the application. The standard that the OCC applies to determine whether to grant or deny a hearing request is set forth in 12 CFR 5.11(b), which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

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

D. Summary of Consideration of Public Comments

The OCC considered all the facts of record, including the banks' records of performance under the CRA, confidential supervisory information, information provided by Old National, and the public comment on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

E. Consummation Requirements

OCC Central District Licensing Office must be advised in writing at least 10 days in advance of the desired effective date for the merger so we may issue the necessary certification letter. The effective date must follow the applicable DOJ's 15-day injunction period and any other required regulatory approval. If the transaction is not consummated within six months from the date of this letter, the approval shall automatically terminate unless the OCC grants an extension of the time period.

The OCC will not issue a letter certifying consummation of the transaction until we have received documentation that any other required regulatory approval has been obtained.

Old National Bank, Evansville, IN merger of KleinBank, Chaska, MN
OCC Control No. 2018-CE-Combination-304368

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 this 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 attached requesting the bank's feedback on how we handled the application. If you have questions please contact Licensing Analyst Valarina Oliver-Dumont at (312) 360-8886 or at Valarina.Oliver-Dumont@occ.treas.gov. Please include the OCC Control Number on any correspondence related to this filing.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing

Attachment: Survey Letter