

[Banking and Finance Law Daily Wrap Up, MERGERS AND ACQUISITIONS —Fed, OCC receive 2,300 comments for CIT Bank, OneWest Bank merger, \(Jul. 22, 2015\)](#)

Banking and Finance Law Daily Wrap Up

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By Lisa M. Goolik, J.D.

The Federal Reserve Board and Office of the Comptroller of the Currency have approved the applications submitted by financial holding company, CIT Group, Inc., and its subsidiary, Carbon Merger Sub LLC, to acquire IMB Holdco LLC and its subsidiary, OneWest Bank. CIT Group's subsidiary bank, CIT Bank, will be merged into OneWest Bank, with OneWest Bank being the surviving entity. The OCC also agreed to [terminate](#) a 2014 consent order against OneWest Bank to address concerns with the bank's residential mortgage servicing and its initiation and handling of foreclosure proceedings. The [Fed](#) and [OCC](#) considered more than 2,300 comments in connection with the transaction.

Acquisition details. CIT Group, with consolidated assets of approximately \$47.9 billion, is the 42nd largest insured depository organization in the United States, controlling approximately \$15.9 billion in deposits. CIT Group controls CIT Bank, which operates a single, nonretail banking office in Salt Lake City, Utah, soliciting nationwide deposits through an Internet-based deposit-taking platform. CIT Bank is the 10th largest insured depository institution in Utah, with approximately 3.1 percent of the total deposits in insured depository institutions in that state.

IMB Holdco, with total consolidated assets of \$21.8 billion, is the 70th largest insured depository organization in the United States, controlling approximately \$14.1 billion in deposits. IMB Holdco controls OneWest Bank, which operates solely in California. OneWest Bank is the 13th largest insured depository institution in California, with approximately 1.4 percent of the total deposits in insured depository institutions in that state.

After the acquisition, CIT Group will control approximately \$30 billion in deposits and would become the 36th largest depository organization in the United States by assets, with consolidated assets of approximately \$70 billion. Because CIT Bank and OneWest Bank do not have overlapping operations, the combined bank would continue to rank as the 10th and 13th largest insured depository institutions in Utah and California, respectively.

Public comments. The Fed provided notice of the proposal in the *Federal Register* on Aug. 28, 2014, and Feb. 11, 2015. To accommodate the level of interest in the proposal, the Fed and the OCC extended the initial period for public comment until Feb. 26, 2015, and jointly hosted a public meeting in Los Angeles, Calif., to provide interested persons an opportunity to present oral comments on the proposal. In all, the Fed and OCC received comments from more than 2,300 individuals and organizations, which included community groups, nonprofit organizations, customers of the two banking organizations, a member of Congress, and other interested organizations and individuals. Approximately 1,700 of the letters resulted from an email campaign initiated by CIT Group and OneWest Bank seeking support for the merger. The OCC also received two petitions in opposition to the merger with over 21,500 signatures.

While a large number of commenters supported the proposal, the Fed reported that a "significant" number of commenters either: opposed the proposal, requested that the Fed approve the proposal only subject to certain conditions, or expressed concerns about the proposal. According to the Fed, the commenters' concerns related to the whether the proposal would result in public benefits and the impact on the stability of the U.S. financial system. However, a number of concerns were critical of the mortgage lending, servicing, and foreclosure practices of OneWest Bank, including its reverse mortgage loan products, as well as the bank's performance under the Community Reinvestment Act and compliance with fair lending laws and regulations.

Fed approval. The Fed concluded that the application met all of the requirements of Section 3 of the Bank Holding Company (BHC) Act. The BHC Act requires that the Fed consider: the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the effectiveness of the involved institutions in combatting money-laundering activities; the convenience and needs of the communities to be served, including the records of performance under the CRA of the insured depository institutions involved in the transaction; and the extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system.

As mentioned above, the Fed received a significant number of comments that were critical of OneWest Bank's CRA performance record, including its "low satisfactory" rating on the Investment Test in its most recent CRA evaluation. Commenters criticized the number of branches maintained by OneWest Bank in low- to middle-income (LMI) census tracts and the level of loans to businesses with less than \$1 million in annual revenues extended by OneWest Bank. Commenters also alleged racial disparities in OneWest Bank's lending activities. Some commenters alleged that OneWest Bank made a disproportionately low number of home mortgage loans to Asian and African American borrowers in the Los Angeles area. A significant number of commenters alleged that OneWest Bank's mortgage servicing and foreclosure practices and policies harmed consumers and did not comply with legal requirements, including those of the California Homeowner Bill of Rights.

With regard to commenters' contentions that OneWest Bank has a poor record in mortgage foreclosures and reverse mortgage loan servicing, OneWest Bank argued that many of the alleged mortgage servicing issues relate back to practices engaged in by IndyMac prior to OneWest Bank's acquisition of IndyMac assets from the FDIC as receiver of IndyMac. The Fed noted that IMB Holdco and OneWest Bank were organized to acquire assets and assume deposits of the failed IndyMac Bank, F.S.B. Currently, approximately 60 percent of total loans at OneWest Bank are loans obtained from the acquisitions of IndyMac and two other institutions from the FDIC.

OneWest Bank also noted that, as part of a mortgage foreclosure Consent Order with the OCC, the bank remediated harms resulting from past deficiencies in connection with the Independent Foreclosure Review and instituted extensive changes to its residential mortgage servicing and foreclosure activities to ensure that these activities are conducted in a safe and sound manner going forward.

With regard to the lending and servicing record of OneWest Bank, the Fed reviewed the bank's CRA records. In 2012, OneWest Bank was assigned an overall "satisfactory" rating at its CRA performance evaluation by the OCC. OneWest Bank received a "high satisfactory" rating for the lending test and a "high satisfactory" rating on the service test. Although the OCC examiners rated the bank's performance under the investment test as "low satisfactory," examiners noted that the bank's investment activities exhibited good responsiveness to the credit and community development needs of the Los Angeles assessment area. Moreover, examiners noted the bank's commitment to help meet identified community development needs, including through the bank management's role in leading the "Steps to Success" program, which promotes financial literacy among LMI and at-risk youth in Los Angeles.

In addition, CIT Group represented to the Fed that since OneWest Bank's last CRA evaluation, the bank increased its community development lending almost tenfold. In terms of services, OneWest Bank employees have provided numerous hours of community service since 2011. OneWest Bank also has provided grants that have allowed numerous individuals to receive homebuyer education and foreclosure prevention counseling.

OCC approval. As a condition of its approval of the bank merger, the OCC will require the combined bank to submit a revised public CRA plan, with input from members of the public for the OCC's review and written determination of no supervisory objection. In particular, the plan must, among other things, provide details concerning the actions the bank will take to ensure that on a prospective basis the bank is helping to meet the credit needs of its assessment area, including details regarding affordable multifamily housing lending, small business lending in LMI geographies, and investments targeted towards LMI geographies and individuals. The revised plan also must contain measurable annual goals and timetables for the achievement of those goals. In

addition, the bank must provide reports to the OCC indicating the results of the bank's efforts to implement the plan.

The OCC also agreed to terminate the 2014 consent order issued against OneWest Bank. OneWest Bank was subject to a consent order that was issued on April 13, 2011, by the Office of Thrift Supervision, the provisions of which were reaffirmed by a consent order issued by the OCC in 2014 at the time OneWest Bank converted its charter from a thrift to a national bank, to address concerns with the bank's residential mortgage servicing and its initiation and handling of foreclosure proceedings. The OCC determined that OneWest Bank has met the terms and requirements of the consent order.

The OCC also approved the request for a waiver of the residency requirement, so that up to 75 percent of the resulting bank's board of directors will not be required to satisfy the residency requirement.

Companies: Carbon Merger Sub LLC; CIT Bank; CIT Group, Inc.; IMB Holdco LLC; OneWest Bank

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