

**Decision of the
Supervision Appeals Review Committee**

In the matter of

Case No. 2019-02

The Bank appealed its Community Reinvestment Act (“CRA”) evaluation to the Supervision Appeals Review Committee (“Committee”). The appeal concerned a determination by the Division of Depositor and Consumer Protection (“DCP”) that an entity controlled by the Bank’s majority shareholder (“Entity”) did not qualify as an “affiliate” of the Bank under the FDIC’s CRA regulations.

The Committee concluded that DCP’s determination was consistent with the FDIC’s regulations at the time of the evaluation.¹ For the Entity to be considered an affiliate of the Bank for CRA purposes, the FDIC’s regulations require the Bank and the Entity to be affiliated through control of one another or through common control by a company that owns both, such as a holding company.² Because neither the Bank nor the Entity controlled one another, and no holding company controlled both, the Committee concluded that the Entity did not qualify as an affiliate for CRA purposes. The Entity’s activities therefore could not be considered as part of the evaluation of the Bank’s CRA performance.

The Committee also recognized that the FDIC’s CRA regulations should be modernized, and referred the Bank to a recently published notice of proposed rulemaking requesting comment

¹ Section M of the FDIC’s *Guidelines for Appeals of Material Supervisory Determinations* provides: “SARC review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made.”

² 12 CFR 345.12(a).

on these regulations. The Committee encouraged the Bank to participate in this process and share its views on these issues. Notwithstanding the important policy questions regarding the CRA that the Bank raised as part of the appeal, the Committee concluded that these policy concerns were more appropriately addressed through the notice-and-comment rulemaking process, which provides a better opportunity to weigh these and other important considerations. The Committee noted that, in the event the CRA regulations are amended, those changes would be reflected in future evaluations of the Bank.

By direction of the Supervision Appeals Review Committee of the FDIC, dated January 9, 2020.