

ORIGINAL



**INTERAGENCY BANK MERGER ACT
APPLICATION**

FOR THE MERGER OF

**BANK OF THE CAROLINAS
MOCKSVILLE, NORTH CAROLINA**

WITH AND INTO

**BANK OF THE OZARKS
LITTLE ROCK, ARKANSAS**

**SUBMITTED TO THE
FEDERAL DEPOSIT INSURANCE CORPORATION**

MAY 28, 2015

DD&F Consulting Group
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INTERAGENCY BANK MERGER ACT APPLICATION

Check all that apply:

Type of Filing	Form of Transaction	Filed Pursuant To
<input type="checkbox"/> Affiliate/Corporate Reorganization	<input checked="" type="checkbox"/> Merger	<input checked="" type="checkbox"/> 12 U.S.C. 1828(c)
<input type="checkbox"/> Combination with Interim Depository Institution	<input type="checkbox"/> Consolidation	<input type="checkbox"/> 12 U.S.C. 1815(d)(2)
<input checked="" type="checkbox"/> Nonaffiliate Combination	<input type="checkbox"/> Purchase and Assumption	<input type="checkbox"/> 12 U.S.C. 1815(d)(3)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Branch Purchase and Assumption	<input type="checkbox"/> 12 U.S.C. 215, 215a
	<input type="checkbox"/> Other _____	<input type="checkbox"/> 12 U.S.C. 1815(a)
		<input type="checkbox"/> Other _____

Applicant Depository Institution

Bank of the Ozarks 121
Name Charter/ Docket Number

Little Rock Arkansas 72223
City State Zip Code

Target Institution

Bank of the Carolinas
Name Charter/ Docket Number

135 Boxwood Village Drive
Street

Mocksville North Carolina 27028
City State Zip Code

Resultant Institution (if different than Applicant)

Name Charter/ Docket Number

Street

City State Zip Code

Contact Person:

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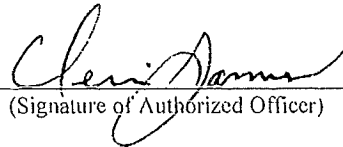
CERTIFICATION

We hereby certify that our board of directors, by resolution, has authorized the filing of this application, and that to the best of our knowledge, it contains no misrepresentations or omissions of material facts. In addition, we agree to notify the agency if the facts described in the filing materially change prior to receiving a decision or prior to consummation. Any misrepresentation or omission of a material fact constitutes fraud in the inducement and may subject us to legal sanctions provided by 18 U.S.C. 1001 and 1007.

We acknowledge that approval of this application is in the discretion of the appropriate federal banking agency. Actions or communications, whether oral, written, or electronic, by an agency or its employees in connection with this filing, including approval of the application if granted, do not constitute a contract, either express or implied, or any other obligation binding upon the agency, other federal banking agencies, the United States, any other agency or entity of the United States, or any officer or employee of the United States. Such actions or communications will not affect the ability of any federal banking agency to exercise its supervisory, regulatory, or examination powers under applicable law and regulations. We further acknowledge that the foregoing may not be waived or modified by any employee or agent of a federal banking agency or of the United States.

Signed this _____ day of _____, 2015

Bank of the Ozarks By
(Applicant)



(Signature of Authorized Officer)

Dennis James

(Typed Name)

EVP and Director of Mergers & Acquisitions

(Title)

Bank of the Carolinas By
(Target Institution)

(Signature of Authorized Officer)

(Typed Name)

(Title)

CERTIFICATION

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Signed this 18th day of May, 2015.

Bank of the Ozarks By
(Applicant)

(Signature of Authorized Officer)

Dennis James

(Typed Name)

EVP and Director of Mergers & Acquisitions
(Title)

Bank of the Carolinas By
(Target Institution)

Stephen R. Talbert
(Signature of Authorized Officer)

Stephen R. Talbert
(Typed Name)

President and Chief Executive Officer
(Title)

INTERAGENCY BANK MERGER ACT APPLICATION

1. Describe the transactions purpose, structure, significant terms and conditions, and financing arrangements, including any plan to raise additional equity or incur debt.

The primary parties to the proposed transaction are listed below, along with short descriptions:

- **Bank of the Ozarks, Inc. (“OZRK”)**, Little Rock, Arkansas, is an Arkansas bank holding company with one wholly-owned subsidiary bank, Bank of the Ozarks.
 - **Bank of the Ozarks (the “Bank” or “BOTO”)**, Little Rock, Arkansas, is a state-chartered, non-Federal Reserve member bank operating from one hundred and sixty-five (165) banking offices in Alabama, Arkansas, Florida, Georgia, New York, North Carolina, South Carolina, and Texas and loan production offices in Austin, Texas, Atlanta, Georgia, Los Angeles, California and New York, New York.
- **Bank of the Carolinas Corporation (“Company”)**, Mocksville, North Carolina, is a North Carolina bank holding company with one wholly-owned subsidiary bank, Bank of the Carolinas.
 - **Bank of the Carolinas (“Company Bank”)**, Mocksville, North Carolina, is a state chartered, Non-Member bank operating from 8 banking offices in North Carolina. As of March 31, 2015, Company Bank had approximately \$363 million in total assets, \$279 million in loans and \$314 million in deposits.

On May 6, 2015, OZRK and BOTO entered into an Agreement and Plan of Merger and Reorganization (the “Agreement”) with Company and Company Bank; a copy of the executed Agreement by and among OZRK, BOTO, Company and Company Bank is provided as **Attachment 1**. Pursuant to the terms of the Agreement, (i) Company will merge with and into OZRK, with OZRK as the surviving entity (the “Merger”), and thereafter (ii) Company Bank will merge with and into BOTO, with BOTO as the surviving entity (the “Bank Merger”).

A draft copy of the Articles of Merger is provided as Exhibit 1 of **Confidential Exhibit 1** (separately bound). A certified copy of the minutes of the proposed Arkansas State Bank Department Board hearing on August 4, 2015 at which the merger would be approved will be provided by amendment. Certified board resolutions of OZRK, BOTO, Company and Company Bank as well as Written Action of the Sole Shareholder of BOTO and Company Bank are provided as **Attachment 2** of this application.

Pursuant to the Federal Deposit Insurance Corporation rules and regulations, publication of the required legal notice was made in *The Arkansas Democrat-Gazette*, a newspaper of general circulation in Little Rock, Arkansas and in the *Winston-Salem Journal*, a newspaper of general circulation in Mocksville, North Carolina on May 28, 2015, June 9, 2015, and June 22, 2015. A copy of the notice is provided in **Attachment 3**. The original newspaper affidavits will be provided to your office as soon as they are available.

The closing of the Merger and the Bank Merger is expected to occur during the third quarter of 2015 and is subject to approval of appropriate regulatory authorities, and the satisfaction of other customary closing conditions.

2. Provide a copy of: (a) the executed merger or transaction agreement, including any amendments; (b) any board of directors resolutions related to the transaction; and, (c) interim charter, names of organizers, and related documents, if applicable.

- a. An executed copy of the Agreement is provided in **Attachment 1**.
- b. Resolutions of the Boards of Directors for OZRK, BOTO, Company and Company Bank are included in **Attachment 2**.
- c. Not applicable. There will be no interim charter as part of the proposed transaction.

3. Describe any issues of permissibility under applicable state or federal laws or regulations of the proposal (e.g., nonbank activities, branching, qualified thrift lenders test).

There are no issues of permissibility of the proposed transaction under applicable state or federal laws or regulations.

4. Describe any nonconforming or impermissible assets or activities that the applicant or resultant institution may not be permitted to retain under relevant law or regulation, including the method of and anticipated time period for divestiture or disposal.

There are no nonconforming or impermissible assets or activities that the applicant or resultant institution may not be permitted to retain under relevant law or regulation.

5. Provide the indicated financial information and describe the assumptions used to prepare the projected statements, including those about the effect of the merger transaction. Material changes between the date of the financial statements and the date of the application should be disclosed. If there are no material changes, a statement to that effect should be made.

- a. **Pro Forma Balance Sheet, as of the end of the most recent quarter and for the first year of operation after the transaction. Indicate separately for the applicant and target institution each principal group of assets, liabilities, and capital accounts; debit and credit adjustments (explained by footnotes), reflecting the proposed acquisition; and the resulting pro forma combined balance sheet. Goodwill and all other intangible assets should be listed separately on the balance sheet. Indicate the amortization period and method used for any intangible asset and the accretion period of any purchase discount on the balance sheet.**

Projected budget and pro forma balance sheets for BOTO and Company Bank, for the first year of operation, are provided in Exhibit 2 of **Confidential Exhibit 1**.

- b. **Projected Combined Statement of Income for the first year of operation following consummation.**

The requested pro forma Combined Statement of Income for the first year of operation following consummation is provided in Exhibit 2 of **Confidential Exhibit 1**.

- c. **Pro Forma and Projected Regulatory Capital Schedule, as of the end of the most recent quarter and for the first year of operation, indicating:**

- **Each component item for Tier 1 (Core) and Tier 2 (Supplementary)**

Capital, Subtotal for Tier 1 and Tier 2 Capital (less any investment in unconsolidated or nonincludable subsidiaries), Total Capital.

- Total risk-weighted assets.
- Capital Ratios: (1) Tier 1 capital to total risk-weighted assets; (2) Total capital to total risk-weighted assets; and (3) Tier 1 capital to average total consolidated assets (leverage ratio).

Pro forma capital ratio calculations for the first year of operation following consummation of the proposed transaction are provided in Exhibit 2 of **Confidential Exhibit 1**.

6. **List the directors and senior executive officers of the resultant institution and provide the name, address, position with, and shares held in that institution or holding company, and principal occupation (if a director).**

Schedules showing the proposed directors and senior executive officers of the resulting institution are provided in **Attachment 4**. Effective June 1, 2015, Edward J. Wydock will be the Chief Risk Officer, which was approved by the board of directors on May 18, 2015.

7. **Describe how the proposal will meet the convenience and needs of the community. For the combining institutions, list any significant anticipated changes in services or products that will result from the consummation of the transaction. If any services or products will be discontinued or fees increased, describe and explain the reasons.**

There will not be any significant changes in services or products at either institution. There are no plans to discontinue services. Fees within Company Bank will be reviewed and compared with BOTO's existing charges but there are no plans for any significant changes based on all work performed to date.

8. **Discuss the programs, products, and activities of the Applicant or the Resultant Institution that will meet the existing or anticipated needs of its community(ies) under the applicable criteria of the Community Reinvestment Act (CRA) regulation, including the needs of low- and moderate-income geographies and individuals. For an Applicant or Target Institution that has received a CRA composite rating of "needs to improve" or "substantial noncompliance" institution-wide or, where applicable, in a state or a multi-state MSA, or has received an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the applicant is expanding as a result of the combination, describe the specific actions, if any, that have been taken to address the deficiencies in the institution's CRA performance record since the rating.**

Company Bank and BOTO have a strong focus on meeting the needs of their communities and are aware of the credit needs of the communities they serve, including the needs of low- and moderate-income neighborhoods.

Company Bank received a CRA rating of "Satisfactory" at its March 1, 2013. examination by the Federal Deposit Insurance Corporation. BOTO received a CRA rating of "Satisfactory" at its October 1, 2013, examination by the Federal Deposit Insurance Corporation.

9. **The Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 imposes additional considerations for certain interstate mergers between insured banks. Savings associations are not subject to 12 USC 1831u. If subject to those provisions, discuss authority; compliance with state age limits and host state(s) filing requirements; and applicability of nationwide and statewide concentration limits. In addition, discuss any other restrictions that the states seek to apply, including state antitrust restrictions.**

Not applicable. BOTO currently operates 16 branches in the State of North Carolina, the home state of Company Bank. The proposed merger of Company Bank with and into BOTO complies with the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994.

10. **List all offices that: (a) will be established or retained as branches, including the main office, of the target institution; (b) are approved, but unopened branch(es) of the target institution, including the date the current federal or state agencies granted approval(s); (c) are existing branches that will be closed as a result of the proposal and indicate the effect on the branch customers served; and, (d) are being retained as branches in the applicants original home state in the event the applicant is relocating its main office to another state. For each branch, list the popular name, street address, city, county, state, and ZIP Code.**

- a. There are 8 branches of Company Bank being retained through the proposed transaction. A list of the offices of Company Bank is provided in **Attachment 5**.
- b. Company Bank does not have any approved, unopened branches.
- c. No branches will be closed as a result of this transaction.
- d. Not applicable.

11. **As a result of this transaction, if the Applicant will be or will become affiliated with a company engaged in insurance activities that is subject to supervision by a state insurance regulator, provide:**

BOTO will not become affiliated with a company engaged in insurance activities as a result of the proposed transaction.

The name of company.

- a. **A description of the insurance activity that the company is engaged in and has plans to conduct.**
- b. **A list of each state and the lines of business in that state in which the company holds, or will hold, an insurance license. Indicate the state where the company holds a resident license or charter, as applicable.**

A non-affiliate transaction also must reply to items 12 through 14.

- 12. Discuss the effects of the proposed transaction on existing competition in the relevant geographic market(s) where applicant and target institution operate. Applicant should contact the appropriate regulatory agency for specific instructions to complete the competitive analysis.**

The relevant geographic market area for Company Bank is comprised of the North Carolina counties of Cabarrus, Davidson, Davie, Forsyth, Randolph and Rowan (the "Designated Market Area"). A map of the Designated Market Area is provided in **Attachment 6**. It is the intention of BOTO to maintain the same market area after the merger. As a result of the merger of Company Bank with and into BOTO, BOTO's deposit market share in the Designated Market Area will be approximately 0.85% (3.32% in Cabarrus County, 1.54% in Davidson County, 24.43% in Davie County, 0.11% in Forsyth County, 2.60% in Randolph County and 4.62% in Rowan County). A list of competing banks in the market area, showing deposit market share is provided in **Attachment 7**.

- 13. If the proposed transaction involves a branch sale or any other divestiture of all or any portion of the bank, savings association, or nonbank company to mitigate competitive effects, discuss the timing, purchaser, and other specific information.**

Company Bank is not selling or disposing of a branch or any part of its business as a result of this transaction.

- 14. Describe any management interlocking relationships (12 USC 3201-3208) that currently exist or would exist following consummation. Include a discussion of the permissibility of the interlock for relevant laws and regulations.**

Not applicable. No management interlocking relationships currently exist or would exist following consummation of the proposed transaction.

FEDERAL DEPOSIT INSURANCE CORPORATION**SUPPLEMENT TO INTERAGENCY BANK MERGER ACT APPLICATION**

All FDIC Applicants should provide the following supplemental information with their application:

15. This section supplements question 12 of the Interagency Bank Merger Act Application for transactions between nonaffiliated parties. Additional guidance relating to the FDIC's consideration of the competitive factors in a proposed merger transaction is contained in the FDIC's Rules and Regulations (12 C.F.R. 303 Subpart D) and Statement of Policy on Bank Merger Transactions (2 FDIC Law, Regulations, and Related Acts (FDIC) 5145).

I. Delineation of the relevant geographic market(s).

The relevant geographic market includes the areas in which the offices to be acquired are located and from which those offices derive the predominant portion of their loans, deposits, or other business. The relevant geographic market also includes the areas where existing and potential customers impacted by the proposed merger may practically turn for alternative sources of banking services.

The market area for Company Bank is comprised of the North Carolina counties of Cabarrus, Davidson, Davie, Forsyth, Randolph and Rowan (the "Designated Market Area"). A map of the Designated Market Area is provided in **Attachment 6**.

- a. Prepare schedules for the Applicant Institution and Target Institution showing the total number of accounts and total dollar volume of deposits¹ for each municipality or census tract, where applicable, according to the recorded address of the depositor (do not submit supporting data). Small amounts may be aggregated and identified as "other." *If the Applicant Institution is a multi-office institution, Applicant Institution deposit information should be provided only for those offices within or proximate to the area(s) described below under paragraph (b).*

A schedule showing the total number and dollar volume of Company Bank deposit accounts for each zip code in the Designated Market Area is provided as **Attachment 8**.

- b. Identify those areas where existing and potential customers of the offices to be acquired may practically turn for alternative sources of banking services. If consideration of the availability of such alternative banking services results in a market area considerably different from that indicated by the sources of deposits, discuss and provide necessary supporting information.

The existing and potential customers of Company Bank have a number of different alternatives when it comes to banking services. The Designated Market Area is home to

¹ In most cases, total deposits will serve as an adequate proxy for the overall share of banking business in the relevant geographic market area. However, other analytical proxies may be appropriate in certain cases (for example, a merger transaction involving trust companies).

7 commercial banks, 1 savings bank and 11 credit unions; there are a total of 251 branch offices located in the Designated Market Area. A schedule of the branch offices of competing depository institutions in the Designated Market Area is provided as **Attachment 9**. Additionally, a list of the alternative financial service providers within the Designated Market Area along with a description of the types of services offered is provided as **Attachment 10**.

- c. Using the information collected in paragraphs (a) and (b), provide a narrative description of the delineated relevant geographic market(s).**

The Designated Market Area for the Surviving Bank includes the North Carolina counties of Cabarrus, Davidson, Davie, Forsyth, Randolph and Rowan. The Designated Market Area is the area from which the majority of Company Bank deposits are generated. A map of the Designated Market Area is provided in **Attachment 6**.

- d. Provide any additional information necessary to support the delineated relevant geographic market(s). Supporting information may include relevant demographic information, locations of major employers, retail trade statistics, and/or information on traffic patterns. Applicants may consult with the applicable FDIC Regional Office in determining whether additional information is necessary.**

As discussed previously, the Designated Market Area is the area from which the majority of Company Bank deposits are generated and includes the North Carolina counties of Cabarrus, Davidson, Davie, Forsyth, Randolph and Rowan.

II. Competition in the relevant geographic market(s).

- a. Prepare a schedule of participating and competing banking institutions' offices, divided into three sections:**
- i. Applicant Institution offices within or proximate to the relevant geographic market(s);**

While BOTO does operate 16 branches in North Carolina, the Bank does not operate any branch offices within the Designated Market Area. All 8 of Company Bank's branches are situated in the center of the state while 15 of BOTO's 16 North Carolina branches (the one exception being a branch in Wilmington, North Carolina) are located to the southwest of Company Bank's Designated Market Area (a map of the branches is provided as **Attachment 11**). BOTO operates two branches that are relatively close to Company Bank branches in the Designated Market Area: BOTO operates a branch in Charlotte, North Carolina that is approximately 17 miles from the nearest Company Bank branch in Harrisburg, North Carolina and BOTO also operates a branch in Cornelius, North Carolina that is located approximately 16 miles from the nearest Company Bank branch in Landis, North Carolina.

- ii. **Target Institution offices within or proximate to the relevant geographic market(s); and**

Company Bank currently operates 8 branches. A list of the offices of Company Bank is provided in **Attachment 5**.

- iii. **Competitor banking offices located or competing within the delineated relevant geographic market(s).**

A schedule of competing institutions in the Designated Market Area is provided as **Attachment 9**.

- b. **For each office listed in paragraph (a), provide the street address; total deposits as reported in the most recent *FDIC Summary of Deposits Data Book* (www.fdic.gov/databank); and distance and general direction from the nearest office of Applicant and Target Institution. *In cases where the delineated relevant geographic market includes a significant portion of a larger metropolitan area, provide only a listing of financial institutions and the aggregate total deposits of all offices operated by each within the delineated relevant geographic market(s).***

The schedule provided as **Attachment 9** provides for each office listed in paragraph (a) above, the street address and total deposits of each bank branch that operates in the delineated relevant geographic market.

- c. **Discuss the extent and intensity of competition in the delineated relevant geographic market(s) provided by nonbank institutions, such as other depository institutions (for example, credit unions) and non-depository institutions (for example, industrial loan companies, finance companies, and/or government agencies). For those institutions regarded as competing in the delineated relevant geographic market(s), provide name, address, and services supplied.**

As previously discussed, the Designated Market Area is home to 11 credit unions that operate from 87 locations. The intensity of competition by nonbank institutions in the Designated Market Area is relatively moderate. A list of the nonbank institutions that offer alternative financial services within the relevant geographic area, including the name of the business, address, and description of services provided, is provided as **Attachment 10**.