



**INTERAGENCY BANK MERGER ACT  
APPLICATION**

**FOR THE MERGER OF**

**OMNIBANK, NA  
HOUSTON, TEXAS**

**WITH AND INTO**

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

**SUBMITTED TO THE  
FEDERAL DEPOSIT INSURANCE CORPORATION**

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**DECEMBER 19, 2013**

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**ORIGINAL**

**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**

**OmniBank, NA**  
Name Charter/ Docket Number

**4328 Old Spanish Trail**  
Street

**Houston** **Texas** **77021**  
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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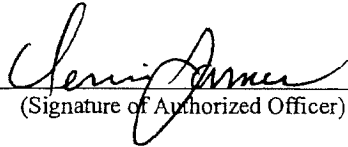
**CERTIFICATION**

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 16<sup>th</sup> day of December, 2013.

Bank of the Ozarks By \_\_\_\_\_  
(Applicant)

  
\_\_\_\_\_  
(Signature of Authorized Officer)

Dennis James  
\_\_\_\_\_  
(Typed Name)

Director of Mergers & Acquisitions  
\_\_\_\_\_  
(Title)

OmniBank, NA By \_\_\_\_\_  
(Target Institution)

\_\_\_\_\_  
(Signature of Authorized Officer)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

**CERTIFICATION**

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Bank of the Ozarks By  
(Applicant)

\_\_\_\_\_  
(Signature of Authorized Officer)

Dennis James

\_\_\_\_\_  
(Typed Name)

Director of Mergers & Acquisitions

\_\_\_\_\_  
(Title)

Julie A. Cripe  
(Signature of Authorized Officer)

OmniBank, NA By  
(Target Institution)

Julie A. Cripe

\_\_\_\_\_  
(Typed Name)

President and CEO

\_\_\_\_\_  
(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 twenty-eight (128) banking offices in Alabama, Arkansas, Florida, Georgia, North Carolina, South Carolina, and Texas and loan production offices in Austin, Texas, Atlanta, Georgia and New York, New York.
  - **OBMS, Inc. (“OBMS”)**, a Delaware corporation that is a wholly-owned subsidiary of OZRK. OBMS is a subsidiary established by OZRK for the sole purpose to execute the proposed acquisition of Bancshares, Inc. and OmniBank, NA.
- **Bancshares, Inc. (“Bancshares”)**, Houston, Texas, is a Delaware bank holding company with one wholly-owned subsidiary bank, OmniBank, NA.
- **OMNIBANK, NA (“OmniBank”)**, Houston, Texas, is a nationally chartered bank operating from eight (8) banking offices in Texas. As of September 30, 2013, OmniBank had \$301 million in total assets, \$169 million in loans and \$269 million in deposits.

On December 9, 2013, OZRK, BOTO and OBMS entered into an Agreement and Plan of Merger (the “Agreement”) with Bancshares and OmniBank. Pursuant to the terms of the Agreement, (i) OBMS will merge with and into Bancshares, with Bancshares as the surviving entity and a wholly-owned subsidiary of OZRK (the “Merger”), (ii) OmniBank will merge with and into BOTO, with BOTO as the surviving entity (the “Bank Merger”) and (iii) following the Merger and the Bank Merger, Bancshares will be dissolved and its assets will be liquidated and distributed to OZRK.

Pursuant to the terms of and subject to the conditions set forth in the Agreement, OZRK has agreed to purchase all of the issued and outstanding stock of Bancshares, or 288,195 shares of Bancshares.

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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 *Houston Chronicle*, a newspaper of general circulation in Houston, Texas on Thursday, December 19, 2013, Tuesday, December 31, 2013, and Monday, January 13, 2014. A copy of the notice is provided in **Attachment 2**. 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 in March of 2014 and is subject to approval of appropriate regulatory authorities, and the satisfaction of other customary 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 Exhibit B of the separately bound **Confidential Exhibit 1**.
- b. Resolutions of the boards of directors for OZRK, BOTO, Bancshares and OmniBank are included in **Attachment 1**.
- 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.**

The indicated financial information is being provided as of September 30, 2013. There have been no material changes at BOTO since September 30, 2013.

- 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 OmniBank, for the first year of operation, are provided in Exhibit C of **Confidential Exhibit 1** (separately bound).

- 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 C of **Confidential Exhibit 1** (separately bound).

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 D of **Confidential Exhibit 1** (separately bound).

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 3**. There will be no changes in the active management of BOTO.

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 OmniBank will be reviewed and compared with possible adjustments 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.

BOTO currently does not operate any branch offices in the ten counties that make up the market area of OmniBank, which includes the Texas counties of Bexar, Caldwell, Comal, Fort Bend, Galveston, Harris, Kendall, Montgomery, Travis, and Williamson. In all of the additional communities that BOTO currently serves, the Bank has focused on meeting the needs of low- and moderate-income areas and individuals. BOTO has and will continue to invest in applicable CRA investment products and services.

The most recent CRA examination for OmniBank was conducted January 28, 2013 by the Office of the Comptroller of the Currency. OmniBank received a rating of "Satisfactory." The most recent CRA examination for BOTO was conducted October 1, 2013 by the Federal Deposit Insurance Corporation. BOTO received a rating of "Satisfactory."

9. **The Riegle-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.**

The proposed merger of OmniBank with and into BOTO is subject to, and complies with, the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal"). Riegle-Neal permits a state to elect to prohibit interstate merger transactions by enacting legislation that expressly prohibits all mergers with all out-of-state banks. 12 U.S.C § 1831u(a)(2). Arkansas is the home state of BOTO, and Texas is the home state of OmniBank. Neither of these states prohibits interstate merger transactions. Specifically, §32.301 of the Texas Finance Code permits a Texas bank to engage in an interstate merger transaction with any out-of-state bank. Accordingly, the Merger is legally authorized as an interstate merger transaction under Riegle-Neal, 12 §§ USC 215a-1 and 1831u(a), subject to certain requirements and conditions set forth in 12 U.S.C. §§ 1831u(a)(5) and 1831u(b). These conditions relate to: (1) compliance with state-imposed age limits, if any; (2) compliance with certain state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and managerial resources. A more detailed discussion regarding the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 is provided in **Attachment 4**.

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 eight (8) branches of OmniBank being retained through the proposed transaction. A list of the offices of OmniBank is provided in **Attachment 5**.
- b. There are no offices currently approved but unopened of OmniBank.
- c. No branches will be closed as a result of this transaction. Please note that, prior to entering into the Agreement, OmniBank filed an application with the OCC to close its branch located at 11610 Bee Caves Road, Austin, Texas. The closing of this location is not in connection with the merger but was commenced prior to signing the Agreement and is expected to close in the first quarter of 2014.
- 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.

- a. **The name of company.**
- b. **A description of the insurance activity that the company is engaged in and has plans to conduct.**
- c. **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 OmniBank is comprised of the Texas counties of Bexar, Caldwell, Comal, Fort Bend, Galveston, Harris, Kendall, Montgomery, Travis, and Williamson. 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 OmniBank with and into BOTO, BOTO's deposit market share in the designated market area will be approximately 0.14% (0.13% in Harris County; 0.17% in Travis County; 10.26% in Caldwell County; 0.13% in Williamson County; and 0.01% in Bexar 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.**

Not applicable. No divestitures of any portion of BOTO are contemplated as part of the proposed 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 OmniBank is comprised of the Texas counties of Bexar, Caldwell, Comal, Fort Bend, Galveston, Harris, Kendall, Montgomery, Travis, and Williamson (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 deposits<sup>1</sup> 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 OmniBank deposit accounts for each city in the Designated Market Area is provided as Attachment 8. Deposit account information for BOTO is not provided due to the bank being a multi-office institution that does not operate any offices in the same market area as OmniBank.

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.

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<sup>1</sup> 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).

The existing and potential customers of OmniBank have a number of different alternatives when it comes to banking services. The Designated Market Area is home to 56 commercial banks, seven savings banks and 138 credit unions and there are a total of 2,238 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 Texas counties of Bexar, Caldwell, Comal, Fort Bend, Galveston, Harris, Kendall, Montgomery, Travis, and Williamson. The Designated Market Area is the area from which the majority of OmniBank 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 OmniBank deposits are generated and includes the Texas counties of Bexar, Caldwell, Comal, Fort Bend, Galveston, Harris, Kendall, Montgomery, Travis, and Williamson.

**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);**

Not Applicable.

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

OmniBank currently operates eight (8) branches. A list of the offices of OmniBank 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](http://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 138 credit unions that operate from 615 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**.