



**INTERAGENCY BANK MERGER ACT  
APPLICATION**

**FOR THE MERGER OF**

**SUMMIT BANK  
ARKADELPHIA, ARKANSAS**

**WITH AND INTO**

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

**SUBMITTED TO THE  
FEDERAL DEPOSIT INSURANCE CORPORATION**

**FEBRUARY 18, 2014**

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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**

**Summit Bank**  
Name Charter/ Docket Number

**409 Main Street**  
Street

**Arkadelphia** **Arkansas** **71923**  
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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**Little Rock, AR 72202**  
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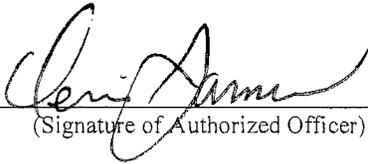
**CERTIFICATION**

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 11<sup>th</sup> day of February, 2014.

Bank of the Ozarks By  
(Applicant)

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

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

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

Summit Bank By  
(Target Institution)

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

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

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

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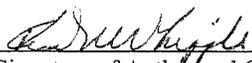
Bank of the Ozarks By  
(Applicant)

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

Dennis James  
(Typed Name)

Director of Mergers & Acquisitions  
(Title)

Summit Bank By  
(Target Institution)

  
(Signature of Authorized Officer)

Ross M. Whipple  
(Typed Name)

Chairman & 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, Los Angeles, California and New York, New York.
- **Summit Bancorp, Inc. (“Bancorp”)**, Arkadelphia, Arkansas, is an Arkansas bank holding company with one wholly-owned subsidiary bank, Summit Bank.
  - **Summit Bank (“Summit”)**, Arkadelphia, Arkansas, is a state chartered, Fed-Member bank operating from 23 banking offices in Arkansas. As of December 31, 2013, Summit had approximately \$1.2 billion in total assets, \$778 million in loans and \$998 million in deposits.

On January 30, 2014, OZRK and BOTO entered into an Agreement and Plan of Merger (the “Agreement”) with Bancorp and Summit. Pursuant to the terms of the Agreement, (i) Bancorp will merge with and into OZRK, with OZRK as the surviving entity (the “Merger”), and (ii) Summit will merge with and into BOTO, with BOTO as the surviving entity (the “Bank Merger”).

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 Bancorp, or 6,132,808 shares. The total purchase price will equal \$216 million with a minimum of 80% stock consideration and the balance in cash. The price is adjusted downward dollar for dollar to the extent Summit’s consolidated net book value (as adjusted) falls below \$135 million. The purchase price is also subject to downward revisions for the impact on equity of terminating all options and stock appreciation rights, and for the penalties incurred for failing to provide the bank data processing software provider with appropriate notice.

A draft copy of the Articles of Merger is provided as Exhibit A of **Confidential Exhibit 1**. A copy of the executed Agreement between BOTO and Summit is provided as **Attachment 1**. A certified copy of the minutes of the proposed Arkansas State Bank Department Board hearing on April 17, 2014 at which the merger would be approved will be provided by amendment. Certified board resolutions of OZRK, BOTO, Bancorp and Summit 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 on February 18, 2014, March 2, 2014, and March 15, 2014 and in the *Daily Siftings Herald*, a newspaper of general circulation in Arkadelphia, Arkansas on February 18, 2014, March 4, 2014, and March 11, 2014 (the *Daily Siftings Herald* only publishes legal notices

on Tuesdays thus the reason for the publication dates). 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 by the end of the second quarter 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 **Attachment 1**.
- b. Resolutions of the Boards of Directors for OZRK, BOTO, Bancorp and Summit 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.**

The indicated financial information is being provided as of December 31, 2013. The following changes in the financial condition of BOTO since June 30, 2013 should be noted:

- 1) The acquisition of First National Bank of Shelby closed on July 31, 2013, which as of the date of acquisition, added approximately \$683 million of assets (\$69 million of cash, \$149 million of investments, \$388 million of loans, \$10 million of core deposit intangible and \$67 million of various other assets), approximately \$601 million of deposits, and resulted in bargain purchase gain of \$1.06 million. Total merger consideration was \$72.3 million (consisting of \$60.1 million of OZRK stock and \$12.2 million of cash);
- 2) Total loans and leases, excluding covered loans and purchase non-covered loans, grew \$189 million from June 30, 2013 to December 31, 2013;
- 3) Total stockholders' equity increased from \$573 million at June 30, 2013 to \$670 million at December 31, 2013 (earnings for the 3rd and 4th quarters totaled \$49 million, the net equity acquired in the First National Bank of Shelby transaction and contributed from the holding company to the bank totaled \$68 million, and dividends from the bank to the holding company totaled \$18 million);

- 4) Net charge-offs in Q3 and Q4 were 0.09% and 0.12%, respectively, of average loans and leases, excluding covered loans, and the allowance for loans and leases as a percentage of total loans and leases, excluding covered loans and purchased non-covered loans, went from 1.61% at June 30, 2013 to 1.65% at September 30, 2013 to 1.63% at December 31, 2013.

The financial data projections with respect to OZRK, BOTO, Bancshares, Inc. and OMNIBANK, NA included in this application have been updated to reflect management's most recent expectations and projections for loan and lease growth, deposit growth, and earnings for 2014. As a result, portions of the financial data and financial data projections included with this application will not necessarily agree to such financial data and financial data projections previously provided on December 19, 2013 covering the proposed OZRK / BOTO / Bancshares, Inc. / OMNIBANK, NA transaction.

- 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 Summit, for the first year of operation, are provided in Exhibit B 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 B 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 C 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 4**. Post-closing, BOTO's Board is expected to appoint Ross Whipple (current Chairman and CEO of Summit) to the Board of Directors of BOTO and OZRK. In addition, OZRK's Chief Financial Officer, Greg McKinney, has been nominated to serve as a director and will become a member of the Boards of Directors of OZRK and BOTO, assuming he is elected by the shareholders at OZRK's 2014 annual meeting of shareholders to be held on May 19, 2014.

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 Summit 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 operates three branches in Benton, one branch in Bryant, four branches in Conway, three branches in Hot Springs, nine branches in Little Rock and one branch in Lonsdale; Summit currently operates a branch in each of these cities. 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 Summit was conducted January 9, 2012 by the Federal Reserve Bank of St. Louis. Summit 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 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. This transaction is an intrastate transaction.

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 23 branches of Summit being retained through the proposed transaction. A list of the offices of Summit is provided in **Attachment 5**.
- b. Summit has one approved ASBD Branch Application for the establishment of a new branch facility located in Fort Smith, Arkansas at 8201 Phoenix Ave., but the branch has not yet been built, nor will Summit be building a branch at this location.
- c. Approximately seven to eight branches are expected to be closed as a result of this transaction, subject to regulatory approval, but it has not yet been determined whether BOTO or Summit branches will be closed. The most significant overlaps are in Conway, Little Rock, Benton, Bryant and Hot Springs, and those are the markets where the closings are likely to occur. In certain markets, such as the Benton market, it has already been determined that the large volumes of business being conducted in certain BOTO and Summit branches in close proximity dictate that both branches remain open. Further study will be required before BOTO can identify the specific branches to be closed. The Summit loan production office personnel in Fort Smith will immediately relocate to one of the BOTO branches in that city.
- 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 Summit is comprised of the Arkansas counties of Clark, Columbia, Faulkner, Garland, Hempstead, Hot Spring, Pulaski, Saline and Sebastian. 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 Summit with and into BOTO, BOTO's deposit market share in the designated market area will be approximately 10.89% (37.81% in Clark County; 11.69% in Columbia County; 4.43% in Faulkner County; 28.08% in Garland County; 29.52% in Hempstead County; 20.82% in Hot Spring County; 7.62% in Pulaski County; 18.41% in Saline County; and 2.07% in Sebastian 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.**

Summit is not selling or disposing of a branch or any part of its business as a result of this transaction. As mentioned above, seven to eight overlapping Summit or BOTO branches are expected to be closed at some point in the future, but those decisions will be made by BOTO independent of any provision of the merger 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 Summit is comprised of the Arkansas counties of Clark, Columbia, Faulkner, Garland, Hempstead, Hot Spring, Pulaski, Saline and Sebastian (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 Summit deposit accounts for each city 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 Summit have a number of different alternatives when it comes to banking services. The Designated Market Area is home to 19

<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).

commercial banks, 1 savings bank and 38 credit unions; there are a total of 545 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 Arkansas counties of Clark, Columbia, Faulkner, Garland, Hempstead, Hot Spring, Pulaski, Saline and Sebastian. The Designated Market Area is the area from which the majority of Summit 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 Summit deposits are generated and includes the Arkansas counties of Clark, Columbia, Faulkner, Garland, Hempstead, Hot Spring, Pulaski, Saline and Sebastian.

## **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**

Summit currently operates 23 branches. A list of the offices of Summit 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 38 credit unions that operate from 74 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**.