

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

Assignment ID: TMI200132

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	MERGER		
<b>EFFECTIVE DATE:</b>	10/18/2021		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Pacific Mercantile Bank		10/18/2021	a California state-chartered bank: CALIFORNIA
<b>RECEIVING PARTY DATA</b>			
<b>Company Name:</b>	Banc of California, National Association		
<b>Street Address:</b>	3 MacArthur Place		
<b>City:</b>	Santa Ana		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	92707		
<b>Entity Type:</b>	National Banking Association: CALIFORNIA		
<b>PROPERTY NUMBERS Total: 15</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	5811883	MY OTA	
<b>Registration Number:</b>	5894473	ONLINE TRADING ACADEMY	
<b>Registration Number:</b>	5695127	GLOBAL TERRITORIES	
<b>Registration Number:</b>	5245974	OTACADEMY	
<b>Registration Number:</b>	4521193	PROACTIVE INVESTOR	
<b>Registration Number:</b>	4521192	PROACTIVE INVESTOR	
<b>Registration Number:</b>	5375611	MY OTA	
<b>Registration Number:</b>	4831993	ONLINE TRADING ACADEMY	
<b>Registration Number:</b>	4831992		
<b>Registration Number:</b>	3035060	ONLINE TRADING ACADEMY	
<b>Registration Number:</b>	3749826	XLT	
<b>Registration Number:</b>	3741418	EXTENDED LEARNING TRACK	
<b>Registration Number:</b>	3762672	ONLINE TRADING ACADEMY	
<b>Registration Number:</b>	5968534	CLIK	
<b>Registration Number:</b>	6234358	CLIK	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2162412824		

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**Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.**

**Phone:** 2162742333  
**Email:** dkonnerth@hahnlaw.com,cbutler@hahnlaw.com  
**Correspondent Name:** Christopher R. Butler  
**Address Line 1:** 200 Public Square, Suite 2800  
**Address Line 4:** Cleveland, OHIO 44114

<b>ATTORNEY DOCKET NUMBER:</b>	225467.00001
<b>NAME OF SUBMITTER:</b>	DEBRA KONNERTH
<b>SIGNATURE:</b>	DEBRA KONNERTH
<b>DATE SIGNED:</b>	05/09/2024

**Total Attachments: 51**

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**AGREEMENT AND PLAN OF MERGER  
OF  
PACIFIC MERCANTILE BANK  
AND BANC OF CALIFORNIA, NATIONAL ASSOCIATION**

This Agreement and Plan of Merger (this "Agreement"), dated as of October 18, 2021, is adopted and made by and between BANC OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, having its main office at 3 MacArthur Place, Santa Ana, California 92707 ("BOC Bank"), and PACIFIC MERCANTILE BANK, a California state-chartered bank, having its main office at 949 South Coast Drive, Suite 300, Costa Mesa, California 92626 ("PM Bank").

WITNESSETH:

WHEREAS, BOC Bank is a national banking association, all the issued and outstanding capital stock of which is owned as of the date hereof directly by Banc of California, Inc., a Maryland corporation ("Parent");

WHEREAS, PM Bank is a California state-chartered bank, all the issued and outstanding capital stock of which is owned as of the date hereof directly by Pacific Mercantile Bancorp, a California corporation ("PM Bancorp");

WHEREAS, Parent and PM Bancorp have entered into an Agreement and Plan of Merger, dated as of March 22, 2021 (the "Parent Merger Agreement"), providing for the merger of PM Bancorp with and into Parent, with Parent as the surviving corporation, pursuant to the provisions of the Maryland General Corporation Law and the California General Corporation Law (the "Parent Merger");

WHEREAS, contingent upon the Parent Merger and promptly following the time at which the Parent Merger becomes effective, the parties to this Agreement intend to effect the merger of PM Bank with and into BOC Bank, with BOC Bank as the surviving institution (the "Bank Merger"), on the terms and subject to the conditions contained in this Agreement; and

WHEREAS, the Board of Directors of PM Bank has adopted a resolution approving this Agreement, authorizing the execution hereof and directing that this Agreement and the Bank Merger contemplated hereby be submitted to the sole shareholder of PM Bank for adoption and approval; and

WHEREAS, the Board of Directors of BOC Bank has adopted a resolution approving this Agreement and the Bank Merger, authorizing the execution hereof and directing that this Agreement hereby be submitted to the sole shareholder of BOC Bank to be ratified and confirmed.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Parent Merger Agreement, the parties hereto agree as follows:

## ARTICLE I

### Constituent Entities

BOC Bank and PM Bank shall be the constituent entities with respect to the Bank Merger.

## ARTICLE II

### Bank Merger

2.1 Bank Merger. Subject to the terms and conditions of this Agreement, effective as of the Effective Time (as defined below), PM Bank shall be merged with and into BOC Bank in accordance with Section 4880 et seq. of the California Financial Code ("CFC") and 12 U.S.C. § 215a, and with the effect provided in Section 4889 of the CFC, Section 1107 of the California General Corporation Law, 12 U.S.C. § 215a and 12 U.S.C. § 1828(c). At the Effective Time (as defined below), the separate existence of PM Bank shall cease, and BOC Bank, as the surviving institution (sometimes hereinafter referred to as the "Surviving Institution"), shall continue its corporate existence as a national banking association. The name of the Surviving Institution shall be "Banc of California, National Association". The parties hereto intend that the Bank Merger qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and this Agreement shall be, and is hereby adopted as, a "plan of reorganization" for purposes of Sections 354 and 361 of the Code.

2.2 Effective Time. The Bank Merger shall become effective promptly following the effective time of the Parent Merger when all of the conditions precedent to the consummation of the Bank Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof (such date and time being herein referred to as the "Effective Time").

## ARTICLE III

### Charter, Bylaws, Etc.

3.1 Articles of Incorporation. At the Effective Time, the articles of incorporation of BOC Bank in effect immediately prior to the Effective Time shall continue to be the articles of incorporation of the Surviving Institution until thereafter amended in accordance with the applicable law. The articles of incorporation of BOC Bank as in effect immediately prior to the Effective Time are set forth as Exhibit A hereto and incorporated herein by reference.

3.2 Bylaws. At the Effective Time, the bylaws of BOC Bank in effect immediately prior to the Effective Time shall continue to be the bylaws of the Surviving Institution until thereafter amended in accordance with the applicable law.

3.3 Directors. At the Effective Time, the directors of BOC Bank prior to the Effective Time will continue as the directors of the Surviving Institution, until such time as their successors shall be duly elected and qualified.

3.4 Home/Branch Offices. The home office and branch offices of BOC Bank existing immediately prior to the Effective Time shall continue to be the home office and branch offices, respectively, of the Surviving Institution. The main office of PM Bank and all branch offices of BOC Bank and PM Bank that are in lawful operation immediately prior to the Effective Time shall be the branch offices of the Surviving Institution upon consummation of the Bank Merger, subject to the consolidation of any offices that may be authorized by BOC Bank and applicable regulatory authorities after the Effective Time.

#### ARTICLE IV

##### Capital Stock

4.1 Effect on PM Bank Capital Stock. By virtue of the Bank Merger and without any action on the part of the holder of any capital stock of PM Bank, at the Effective Time, all shares of PM Bank capital stock issued and outstanding shall be automatically cancelled and retired and shall cease to exist, and no cash, new shares of common stock, or other property shall be delivered in exchange therefor.

4.2 Effect on BOC Bank Capital Stock. Each share of BOC Bank capital stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and unaffected by the Bank Merger, and such shares shall be the only capital stock of the Surviving Institution as of the Effective Time.

#### ARTICLE V

##### Effect of Bank Merger

The effect of the Bank Merger is as prescribed by law. From and after the Effective Time, and in addition to the effects under applicable law, including, without limitation 12 U.S.C. § 215a: (i) all assets and all rights, franchises, and interests of PM Bank in and to every type of property (including intellectual, real, personal, and mixed), tangible and intangible, and choses in action shall be transferred to and vested in the Surviving Institution by virtue of the Bank Merger without any deed or other transfer; (ii) the Surviving Institution, without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, and receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by PM Bank immediately prior to the Effective Time; and (iii) the Surviving Institution shall be responsible for all of the liabilities of every kind and description of PM Bank existing as of the Effective Time.

## ARTICLE VI

### Conditions to the Bank Merger

The respective obligations of each of BOC Bank and PM Bank to consummate the Bank Merger are subject to the fulfillment, or written waiver by the party entitled to satisfaction thereof prior to the Effective Time, of each of the following conditions:

(a) This Agreement shall have been ratified and approved by the written consent of the sole shareholder of each of BOC Bank and PM Bank in lieu of a meeting of shareholders, *provided*, that such action by written consent is authorized under the applicable articles of incorporation or bylaws or otherwise provided by law and each of BOC Bank and PM Bank shall have delivered an executed copy of the Officers' Certificate in the form attached hereto as Exhibit B certifying such approvals.

(b) All approvals and authorizations of, filings and registrations with, and notifications to, all governmental authorities required for the consummation of the Bank Merger shall have been obtained or made and shall be in full force and effect and all waiting periods required by law shall have expired;

(c) No governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and prohibits consummation of the transactions contemplated by this Agreement; and

(d) The Parent Merger shall have been consummated in accordance with the terms and conditions of the Parent Merger Agreement.

## ARTICLE VII

### Further Documents

If at any time the Surviving Institution shall consider or be advised that any further deeds, assignments, conveyances or assurances in law are necessary or desirable to vest, perfect or confirm of record in the Surviving Institution the title to any property or rights of the constituent entities, or otherwise to carry out the provisions hereof, the persons who were the proper officers and directors of the constituent entities immediately prior to the Effective Time (or their successors in office) shall execute and deliver any and all proper deeds, assignments, conveyances and assurances in law, and do all things necessary or desirable, to vest, perfect or confirm title to such property or rights in the Surviving Institution and otherwise to carry out the provisions hereof.

## ARTICLE VIII

### Termination

In the event that the Parent Merger Agreement is terminated pursuant to Section 7.01 thereof, this Agreement shall be terminated and the Bank Merger provided for



herein shall be abandoned automatically and without any further act or deed by the parties hereto. This Agreement also may be terminated at any time prior to the Effective Time by an instrument executed by each of the parties hereto.

## ARTICLE IX

### Miscellaneous

9.1 Representations and Warranties. Each of the parties hereto represents and warrants that this Agreement has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof.

9.2 Entire Agreement. This Agreement (including the documents and instruments referred to herein and attached hereto) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

9.3 Counterparts. This Agreement may be executed in counterparts (including by facsimile or other electronic means), each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the federal laws of the United States, without regard to choice of law principles, except to the extent that the laws of the State of California shall be applicable hereto.

9.5 Assignment. This Agreement shall not be assignable by operation of law or otherwise.

9.6 Nonsurvival of Agreements. Except for Article VII, none of the agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time or termination of this Agreement as provided in Article VIII.

9.7 Amendment. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

9.8 Notices. All notices, requests, instructions and other communications to be given hereunder by any party to the other shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation) or mailed by registered or certified mail, postage prepaid (return receipt requested), to such party at its address set forth below or such other address as such party may specify by notice to the other party.

If to PM Bank to:

c/o Pacific Mercantile Bancorp  
 949 South Coast Drive, Third Floor  
 Costa Mesa, California 92626  
 Attention: Curt A. Christianssen, Chief Financial Officer

Facsimile: (855) 436-2416  
Email: curt.christianssen@pmbank.com

With a copy to:

Sheppard, Mullin, Richter & Hampton LLP  
650 Town Center Drive, 10<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Josh Dean  
Facsimile: (714) 428-5991  
Email: jdean@sheppardmullin.com

If to BOC Bank to:

c/o Banc of California, Inc.  
3 MacArthur Place  
Santa Ana, California 92707  
Attention: Chief Executive Officer  
With a copy to: General Counsel  
Facsimile: (877) 788-8061  
Email: jared.wolff@bancofcal.com;  
With a copy to: ido.dotan@bancofcal.com

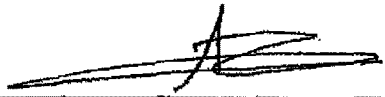
With a copy to:

Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, California 90067  
Attention: Patrick S. Brown  
Facsimile: (310) 712-8800  
Email: brownp@sullcrom.com


*[Signature page to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the day and year first written above.

**BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION**

By:   
Name: Ido Dotan  
Title: Executive Vice President,  
General Counsel

**BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION**

By:   
Name: Ido Dotan  
Title: Corporate Secretary

*[Signature Page to the Agreement and Plan of Merger]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the day and year first written above.

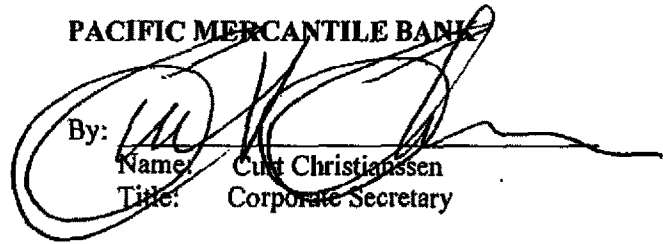
**PACIFIC MERCANTILE BANK**

By: 

Name: Bradford R. Dinsmore

Title: President and Chief Executive Officer

**PACIFIC MERCANTILE BANK**

By: 

Name: Curt Christiansen

Title: Corporate Secretary

*[Signature Page to the Agreement and Plan of Merger]*

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**EXHIBIT A**  
**ARTICLES OF INCORPORATION**

**Amended and Restated Articles of Association****Banc of California, National Association  
(November 3, 2017)**

For organizing an association to perform any lawful activities of national banks, the undersigned enter into the following Articles of Association:

**FIRST. Corporate title.** The full corporate title of the association is Banc of California, National Association (the "Association").

**SECOND. Office.** The main office shall be located in Santa Ana, California. The general business of the Association shall be conducted at its main office and its branches.

**THIRD. Directors.** The board of directors of this Association shall consist of not less than five nor more than twenty-five persons or by resolution of a majority of the shareholders at any annual or special meeting thereof. The exact number is to be fixed and determined from time to time by resolution of a majority of the full board of directors. Each director shall own common or preferred stock of the Association or of a holding company owning the Association, with either an aggregate par, fair market, or equity value of \$1,000. Determination of these values may be based as of either (i) the date of purchase, or (ii) the date the person became a director, whichever value is greater. Any combination of common or preferred stock of the Association or holding company may be used.

Any vacancy in the board of directors may be filled by action of a majority of the remaining directors between meetings of shareholders. The board of directors may not increase the number of directors between meetings of shareholders to a number which exceeds by more than two the number of directors last elected by shareholders.

Directors shall be elected for a term of one year and until their successors are elected and qualified. Terms of directors, including terms of directors selected to fill vacancies, shall expire at the next regular meeting of shareholders at which directors are elected, unless they resign, are removed from office.

Despite the expiration of a director's term, the director shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors and his or her position is eliminated.

Honorary or advisory members of the board of directors, without voting power or power of final decision in matters concerning the business of the Association, may be appointed by resolution of a majority of the full board of directors, or by resolution of shareholders at any annual or special meeting. Honorary or advisory directors shall not be counted to determine the number of directors of the Association or the presence of a quorum for any board action, and shall not be required to own qualifying shares.

**FOURTH. Shareholder Meeting.** There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any other convenient place the board of directors may designate, on

Amended and Restated Articles of Association  
 Banc of California, National Association

the day of each year specified therefore in the bylaws of the Association (the "Bylaws"), or if that day falls on a legal holiday in the state in which the Association is located, on the next following banking day. If no election is held on the day fixed or in the event of a legal holiday on the following banking day, an election may be held on any subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares issued and outstanding. A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the Office of the Comptroller of the Currency determines that an emergency circumstance exists. Provided that the Association remains a wholly-owned subsidiary with a single shareholder, the sole shareholder is permitted to waive notice of the shareholders' meeting. Shareholders of common stock (or preferred stock) shall not be permitted to cumulate their votes in the election of directors.

If the issuance of preferred stock with voting rights has been approved by the Office of the Comptroller of the Currency and authorized by a vote of shareholders owning a majority of the common stock of the Association after receiving not less than five days notification by registered or certified mail pursuant to action taken by the board of directors, preferred shareholders will not be included within the same class as common shareholders, to elect directors.

A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the Association, which resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

A director may be removed by shareholders at a meeting called to remove him or her, when notice of the meeting states that the purpose or one of the purposes is to remove him or her (but without any such notice when the action is taken by written consent or otherwise, by the sole shareholder of the Association), if there is a failure to fulfill one of the affirmative requirements for qualification, or for cause..

**FIFTH. Capital stock.** The total number of shares of all classes of the capital stock that the Association has the authority to issue is 25 million, of which 20 million shall be common stock of par value of \$.01 per share, and of which 5 million shall be serial preferred stock of par value \$.01 per share. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Article or to the extent that such approval is required by governing law, rule or regulation.

No holder of shares of the capital stock of any class of the Association shall have any preemptive or preferential right of subscription to any shares of any class of stock of the Association, whether now or hereafter authorized, or to any obligations convertible into stock of the Association, issued, or sold, nor any right of subscription to any thereof other than such, if any, as the board of directors, in its discretion may from time to time determine and at such price as the board of directors may from time to time fix. Preemptive rights also must be approved by a vote of holders of two-thirds of the bank's outstanding voting shares.

Unless otherwise specified in the Articles of Association or required by law, (1) shareholders owning a majority voting interest in the outstanding voting stock must approve all

Amended and Restated Articles of Association  
Banc of California, National Association

matters requiring shareholder action, including amendments to the Articles of Association, and (2) each shareholder shall be entitled to one vote per share.

Unless otherwise specified in the Articles of Association or required by law, all shares of voting stock shall be voted together as a class, on any matters requiring shareholder approval. If a proposed amendment would affect two or more classes or series in the same or a substantially similar way, all the classes or series so affected, must vote together as a single voting group on the proposed amendment.

Nothing contained in this Article (or in any supplementary Articles hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, provided, that this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the Association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the Association if the preferred stock is exchanged for securities of such other corporation, provided, that no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Office or the Federal Deposit Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Article (or in any supplementary Articles hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving entity in a merger or consolidation for the Association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the Association's capital stock and a statement of the designations, and the relative rights, preferences and limitations of the shares of each class and series (if any) of capital stock are as follows:

A. Common stock. Except as provided in this Article (or in any supplementary Articles thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any



Amended and Restated Articles of Association  
Banc of California, National Association

class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the Association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the Association available for distribution remaining after: (i) payment or provision for payment of the Association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provisions for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the Association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. Preferred Stock. The Association may provide in supplementary Articles to its Articles of Association for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary Article to the Articles of Association. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

- (1) The distinctive serial designation and the number of shares constituting such series;
- (2) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;
- (3) The voting powers, full or limited, if any, of shares of such series;
- (4) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which such shares may be redeemed;
- (5) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Association;
- (6) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;
- (7) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the Association and, if so, the conversion price(s), or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange;

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Banc of California, National Association

- (8) The price or other consideration for which the shares of such series shall be issued; and
- (9) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary Articles of Association sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of these Articles of Association, fix and determine the relative rights and preferences of the shares of any series so established.

Shares of one class or series may be issued as a dividend for shares of the same class or series on a pro rata basis and without consideration. Shares of one class or series may be issued as share dividends for a different class or series of stock if approved by a majority of the votes entitled to be cast by the class or series to be issued, unless there are no outstanding shares of the class or series to be issued. Unless otherwise provided by the board of directors, the record date for determining shareholders entitled to a share dividend shall be the date authorized by the board of directors for the share dividend.

The board of directors may fix a record date for determining shareholders entitled to notice of and to vote at any meeting. The record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty nor less than ten days before the close of business on the day before the first notice is mailed or otherwise sent to the shareholders, provided that in no event may a record date be more than 60 days before the meeting.

If a shareholder is entitled to fractional shares pursuant to preemptive rights, a stock dividend, consolidation or merger, reverse stock split or otherwise, the Association may: (a) issue fractional shares; (b) in lieu of the issuance of fractional shares, issue script, or warrants entitling the holder to receive a full share upon surrendering enough script or warrants to equal a full share; (c) if there is an established and active market in the Association's stock, make reasonable arrangements to allow the shareholder to realize a fair price through sale of the fraction, or purchase of the additional fraction required for a full share; (d) remit the cash equivalent of the fraction to the shareholder; or (e) sell full shares representing all the fractions at public auction or to the highest bidder after having solicited and received sealed bids from at least three licensed stock brokers; and distribute the proceeds pro rata to shareholders who otherwise would be entitled to the fractional shares. The holder of a fractional share is entitled to exercise the rights for shareholder, including the right to vote, to receive dividends, and to participate in the assets of the Association upon liquidation, in proportion to the fractional interest. The holder of script or warrants is not entitled to any of these rights, unless the script or warrants explicitly provide for such rights. The script or warrants may be subject to such additional conditions as: (1) that the script or warrants will become void if not exchanged for full

Amended and Restated Articles of Association  
Banc of California, National Association

shares before a specified date; and (2) that the shares for which the script or warrants are exchangeable may be sold at the option of the Association and the proceeds paid to scripsholders.

The Association, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the shareholders. Obligations classified as debt, whether or not subordinated, which may be issued by the Association without the approval of shareholders, do not carry voting rights on any issue, including an increase or decrease in the aggregate number of the securities, or the exchange or reclassification of all or part of securities into securities of another class or series.

**SIXTH. Board of Directors.** The board of directors shall appoint one of its members president of this Association, and shall appoint one of its members chairperson of the board and shall have the power to appoint one or more vice presidents, a secretary who shall keep minutes of the directors' and shareholders' meetings and be responsible for authenticating the records of the Association, and such other officers and employees as may be required to transact the business of this Association. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors according to the Bylaws.

The board of directors shall have the power to:

- (1) Define the duties of the officers, employees, and agents of the Association.
- (2) Delegate the performance of its duties, but not the responsibility for its duties, to the officers, employees, and agents of the Association.
- (3) Fix the compensation and enter into employment contracts with its officers and employees upon reasonable terms and conditions consistent with applicable law.
- (4) Dismiss officers and employees.
- (5) Require bonds from officers and employees and to fix the penalty thereof.
- (6) Ratify written policies authorized by the Association's management or committees of the board.
- (7) Regulate the manner in which any increase or decrease of the capital of the Association shall be made, provided that nothing herein shall restrict the power of shareholders to increase or decrease the capital of the Association according to law, and nothing shall raise or lower from two-thirds the percentage required for shareholder approval to increase or reduce the capital.
- (8) Manage and administer the business and affairs of the Association.
- (9) Adopt initial Bylaws for managing the business and regulating the affairs of the Association that are not inconsistent with law or the Articles of Association.
- (10) Amend or repeal the Bylaws, except to the extent that the Articles of Association reserve this power in whole or in part to shareholders.
- (11) Make contracts.
- (12) Generally perform all acts that are legal for a board of directors to perform.

Amended and Restated Articles of Association  
Banc of California, National Association

**SEVENTH. Main Office and Branches.** The board of directors shall have the power to change the location of the main office to any authorized branch within the limits of Santa Ana, California without the approval of the shareholders, or with a vote of shareholders owning two-thirds of the stock of such Association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of Santa Ana, California, but not more than 30 miles beyond such limits. The board of directors shall have the power to establish or change the location of any branch or branches of the Association to any other location permitted under applicable law, without approval of shareholders, subject to approval by the Comptroller of the Currency.

**EIGHTH. Duration.** The corporate existence of this Association shall continue until termination according to the laws of the United States.

**NINTH. Special Meetings.** A majority of the board of directors, the chairman of the board, the president, or shareholders owning, in the aggregate, not less than 10 percent of the stock of this Association, may call a special meeting of shareholders at any time. A national bank must mail shareholders notice of the time, place, and purpose of all shareholders' meetings at least 10 days prior to the meeting by first class mail, unless the Office of the Comptroller of the Currency determines that an emergency circumstance exists. Provided that the Association remains a wholly-owned subsidiary with a single shareholder, the sole shareholder is permitted to waive notice of the shareholders' meeting.

**TENTH. Indemnification.** The Association may make or agree to make indemnification payments to an institution-affiliated party, as defined at 12 U.S.C. § 1813(u), for an administrative proceeding or civil action initiated by any federal banking agency, that are reasonable and consistent with the requirements of 12 U.S.C. § 1828(k) and the implementing regulations there under.

The Association may indemnify an institution-affiliated party, as defined at 12 U.S.C. § 1813(u), for damages and expenses, including the advancement of expenses and legal fees, in cases involving any action, suit or proceeding, whether civil, criminal, administrative or investigative not initiated by a federal banking agency, in accordance with federal law and the Code of Maryland, as amended, provided such payments are consistent with safe and sound banking practices.

**ELEVENTH. Amendments.** These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this Association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount. The Association's board of directors may propose one or more amendments to the Articles of Association for submission to the shareholders.

**EXHIBIT B**

**Certificate of Approval  
of  
Agreement of Merger**

\_\_\_\_\_ and \_\_\_\_\_ certify that:

1. They are the [•] and [•], respectively, of [Banc of California, National Association, a national banking association][Pacific Mercantile Bank, a California state-chartered bank].

2. The principal terms of the Agreement of Merger in the form attached were duly approved by the board of directors and by the sole shareholder of [Banc of California, National Association][ Pacific Mercantile Bank] by a vote that equaled or exceeded the vote required.

3. The shareholder approval was by the sole shareholder, which held 100% of the outstanding shares of [Banc of California, National Association][ Pacific Mercantile Bank].

4. There is only one class of shares and the number of shares outstanding entitled to vote on the merger is [100][•].

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: \_\_\_\_\_, 2021

\_\_\_\_\_  
[Name]  
[Title]

\_\_\_\_\_  
[Name]  
[Title]

**STATE OF CALIFORNIA  
SECRETARY OF STATE**

**OFFICERS' CERTIFICATE  
OF  
BANC OF CALIFORNIA, NATIONAL ASSOCIATION**

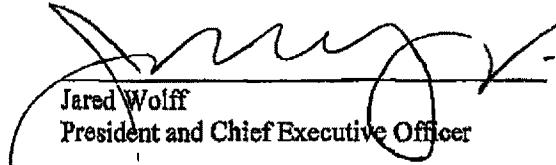
Jared Wolff and Ido Dotan certify solely in their capacities as the President and Chief Executive Officer and the Corporate Secretary of Banc of California, National Association, a national banking association (the "Company"), respectively, and not in their individual capacities and without any personal liability, that:

1. They are the President and Chief Executive Officer and the Executive Vice President, General Counsel and Corporate Secretary, respectively, of the Company.
2. The principal terms of the Agreement of Merger in the form attached as Exhibit A were duly approved by the board of directors of the Company and by the sole shareholder of the Company by a vote that equaled or exceeded the vote required. The merger shall be effective as of October 18, 2021 at 9:01 p.m. PT.
3. The shareholder approval was by the sole shareholder, which held 100% of the outstanding shares of the Company.
4. The Company has only one class of shares and the number of shares outstanding entitled to vote on the merger is 100.
5. The percentage vote required is at least two-thirds.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.


Dated: October 18, 2021

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---

Jared Wolff  
President and Chief Executive Officer



---

Ido Dotan  
Executive Vice President, General Counsel  
and Corporate Secretary

*[Signature Page to California Officer's Certificate (BOC Bank)]*

Execution Version

**STATE OF CALIFORNIA  
SECRETARY OF STATE  
OFFICERS' CERTIFICATE  
OF  
PACIFIC MERCANTILE BANK**

Bradford R. Dinsmore and Curt Christianssen certify solely in their capacities as the President and the Secretary of Pacific Mercantile Bank, a California state-chartered bank (the "Company"), respectively, and not in their individual capacities and without any personal liability, that:

1. They are the President and Chief Executive Officer and the Executive Vice President, Chief Financial Officer and Corporate Secretary, respectively, of the Company.
2. The principal terms of the Agreement of Merger in the form attached as Exhibit A were duly approved by the board of directors and by the sole shareholder of the Company by a vote that equaled or exceeded the vote required. The merger shall be effective as of October 19, 2021 at 12:01 a.m. PT.
3. The shareholder approval was by the sole shareholder, which held 100% of the outstanding shares of the Company.
4. The Company has only one class of shares and the number of shares outstanding entitled to vote on the merger is One.
5. The percentage vote required is 100%.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

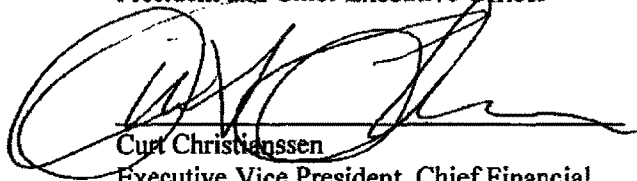
Dated: October 18, 2021

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Bradford R. Dinsmore  
President and Chief Executive Officer



Curt Christensen  
Executive Vice President, Chief Financial  
Officer and Corporate Secretary



## Office of the Comptroller of the Currency

Western District  
1050 17th St., Suite 1500  
Denver, CO 80265-1050

October 18, 2021

Patrick S. Brown  
Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, California 90067-1725

Re: Application to merge Pacific Mercantile Bank, Costa Mesa, California, with and into Banc of California, National Association, Santa Ana, California  
OCC Control No.: 2021-WE-Combination-321198 Charter Number: 25080

Dear Mr. Brown:

This letter is the official certification of the Office of the Comptroller of the Currency (OCC) to merge Pacific Mercantile Bank, Costa Mesa, California, with and into Banc of California, National Association, Santa Ana, California, effective as of October 19, 2021. The resulting bank title is Banc of California, National Association, charter number 25080.

This is also the official authorization given to Banc of California, National Association to operate the branches of the target institution and the main office of the target institution as a branch.

If the combination does not occur as represented in your correspondence of October 8, 2021, this certification must be returned to the OCC.

Please include the OCC control number on any correspondence related to this filing. If you have any questions, contact me at (202) 805-9967 or at [yoojin.na@occ.treas.gov](mailto:yoojin.na@occ.treas.gov).

Sincerely,

Yoo jin  
Na

Digitally signed by  
Yoo jin Na  
Date: 2021.10.18  
17:08:31 -04'00'

Yoo Jin Na  
Director, Western District Licensing



September 30, 2021

Patrick S. Brown  
Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, California 90067-1725

Re: Application to merge Pacific Mercantile Bank, Costa Mesa, California, with and into Banc of California, National Association, Santa Ana, California  
OCC Control No.: 2021-WE-Combination-321198 Charter Number 25080

Dear Mr. Brown:

The Office of the Comptroller of the Currency (OCC) hereby approves the application to merge Pacific Mercantile Bank, Costa Mesa, California (Pacific Mercantile) with and into Banc of California, National Association, Santa Ana, California (Banc of California). This approval is granted based on a thorough review of all information available to the OCC, including commitments and representations made in the application and during the application review process.

#### **I. Background and the Transaction**

Banc of California is a \$7.9 billion national bank with its main office in Santa Ana, California and branches in California. Banc of California is a wholly owned subsidiary of Banc of California, Inc. (BoC, Inc.), a Maryland corporation and registered bank holding company.

Pacific Mercantile is a \$1.6 billion California-chartered state member bank with its main office in Costa Mesa, California and branches in California. Pacific Mercantile is a wholly owned subsidiary of Pacific Mercantile Bancorp (PMB), a California corporation and registered bank holding company.

BoC, Inc. submitted an application with the Federal Reserve Bank of San Francisco to acquire PMB pursuant to an Agreement and Plan of Merger by and between BoC, Inc. and PMB dated March 22, 2021. Pursuant to the Agreement and Plan of Merger, PMB will merge with and into BoC, Inc. with BoC, Inc. being the surviving company. Post-merger, Pacific Mercantile will become a wholly owned subsidiary of BoC, Inc. Promptly after the merger of PMB and BoC, Inc., Pacific Mercantile will merge with and into Banc of California, with Banc of California continuing as the surviving institution.

Patrick S. Brown  
 Sullivan & Cromwell LLP  
 Banc of California, National Association  
 OCC Control No.: 2021-WE-Combination-321198

The OCC and Board of Governors of the Federal Reserve System received comments from a number of parties regarding the proposed merger. The OCC carefully considered the concerns of the commenters as they related to the statutory and regulatory factors considered by the OCC in acting on the merger application, including performance under the Community Reinvestment Act (CRA), and the probable effects of the merger on the convenience and needs of the communities to be served. The public comments are discussed under the Public Comments and Analysis section below.

## **II. Legal Authority**

Banc of California applied to the OCC for approval to merge Pacific Mercantile with and into Banc of California under 12 USC 215a and the Bank Merger Act (BMA), 12 USC 1828(c). Section 215a authorizes mergers between national banks “located within the same State.” The main offices and branches of both Banc of California and Pacific Mercantile are located in California.

The BMA requires the OCC to consider, among other matters, whether the proposed transaction would have significant anticompetitive effects. The agency must also consider the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and the risk of the transaction to the stability of the United States banking or financial system. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of the banks in combating money laundering activities. 12 USC 1828(c)(11). The OCC has considered these factors and found them consistent with approval.

Banc of California seeks approval to operate as branches the main office and branches of Pacific Mercantile. These branch acquisitions are authorized under 12 USC 36(b)(2).

## **III. Community Reinvestment Act and Convenience and Needs**

In evaluating this proposed transaction, the OCC has carefully considered (i) Banc of California’s most recent CRA performance evaluation (PE); (ii) information available to the OCC as a result of its supervisory responsibilities; (iii) written public comments; and (iv) information Banc of California provided in response to the public comments.<sup>1</sup>

### **A. Community Reinvestment Act**

The OCC considers the filer’s CRA record of performance in helping meet the credit needs of its communities, including low- or moderate-income (LMI) neighborhoods, when evaluating applications under the BMA, 12 USC 1828(c).<sup>2</sup> Accordingly, the OCC considered Banc of California’s CRA PE. Based on this review, the OCC concluded that Banc of California’s record of CRA performance is consistent with approval of the application.

<sup>1</sup> We also considered materials that Banc of California submitted to the Federal Reserve Bank of San Francisco in connection with the related holding company application.

<sup>2</sup> See 12 CFR 5.33(e)(1)(iii)(A); see also 12 CFR 25.02(a)(3).

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 Sullivan & Cromwell LLP  
 Banc of California, National Association  
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In the most recent CRA PE dated October 22, 2018 (2018 CRA PE),<sup>3</sup> Banc of California received an overall CRA rating of “Satisfactory.” Banc of California received a rating of “High Satisfactory” for both the lending test and service test and a rating of “Outstanding” for the investment test. The major factors supporting this rating include: (i) good responsiveness to the credit needs of the Los Angeles-Long Beach-Anaheim Metropolitan Statistical Area (MSA) (Los Angeles MSA) and the San Diego-Carlsbad MSA (San Diego MSA); (ii) overall excellent geographic distribution of home mortgage loans originations/purchases and good distribution of small business loan originations/purchases; (iii) overall adequate borrower distribution of home mortgage loan originations/purchases; (iv) excellent level of community development (CD) loans in both the Los Angeles MSA and the San Diego MSA; (v) an excellent level of qualified CD investments in both the Los Angeles MSA and the San Diego MSA; (vi) delivery systems that are reasonably accessible to essentially all portions of the Los Angeles MSA and the San Diego MSA; and (vii) an excellent level of CD services that were responsive to the CD needs in both the Los Angeles MSA and the San Diego MSA.

#### **B. Convenience and Needs**

Under the BMA, the OCC also considers the convenience and needs of the communities served by the resulting bank.<sup>4</sup> Though the bank’s CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the “Public Notice and Comments” booklet of the *Comptroller’s Licensing Manual* (November 2017), consideration of a bank’s CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis.<sup>5</sup> The OCC has concluded that approval of the transaction is consistent with the needs of the communities that the resulting bank will serve.

### **IV. Public Comments and Analysis**

#### **A. Summary of Public Comments and Analysis**

The OCC received 49 public comments concerning the proposed transaction. A majority of the comments received support the merger.<sup>6</sup> However, a substantial portion oppose the merger. The comments opposing the merger were largely identical and raised the same concerns, except that

<sup>3</sup> The OCC evaluated Banc of California as a large institution. Examiners reviewed Home Mortgage Disclosure Act (HMDA) reportable home mortgage loans and small loans to businesses for the period January 1, 2015, to December 31, 2017. Banc of California does not originate small loans to farms. Examiners reviewed community development (CD) loans, qualified investments, and CD and retail services for the period May 1, 2015 through 2017. A copy of the 2018 CRA PE is available at <https://www.occ.gov/static/cra/craeval/May21/25080.pdf>.

<sup>4</sup> See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

<sup>5</sup> *Comptroller’s Licensing Manual*, Public Notice and Comments (November 2017).

<sup>6</sup> The OCC is aware that Banc of California requested support from grantees but believes that the range of comments received reflects a balance of views. The OCC has carefully considered all comments, including the concerns raised by commenters opposing the merger.

Patrick S. Brown  
Sullivan & Cromwell LLP  
Banc of California, National Association  
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one joint comment letter also included additional details and concerns. This comment letter was later withdrawn.<sup>7</sup> Commenters stated that Banc of California has not established it will meet the convenience and needs of the communities impacted by the merger and specifically raised concerns with: (i) the effect of Banc of California's community development (CD) and multifamily lending on housing affordability and Banc of California's declining level of CD lending; (ii) Banc of California's fee income as compared to its philanthropic contributions; (iii) the proportion of Banc of California's mortgage loan originations and purchases that come from LMI areas and majority minority areas; (iv) Banc of California's branch closings and its original plan to close two additional branches if the merger is approved; and (v) Banc of California's level of management diversity and diverse spending.

All opposing commenters requested that if the OCC does not deny the application, it extend the comment period to allow additional time to conduct research and further assess the concerns they noted along with Banc of California's CRA activity and plans. Notwithstanding their concerns, all the commenters opposing the merger expressed appreciation for Banc of California's responsiveness to them about their comments.

#### Community Development and Multifamily Lending

Commenters noted that over 50% of Banc of California's CD lending appeared to be for housing that is not restricted to ensure affordability for LMI residents. Commenters argued that this indicates that most of Banc of California's CRA lending is a result of its normal commercial real estate business and not a result of a CRA program. Commenters stated that this type of activity does not have a clear public benefit and expressed concern that without safeguards, like enhanced due diligence procedures, it may result in displacement of low-income communities and communities of color.

In its response to the public comments, Banc of California pointed to its record of CD lending that supports affordable housing. In particular, Banc of California asserted that 45%, or \$287 million, of its \$637 million in CD affordable housing loans from 2018 through 2020 supported properties that accept Section 8 housing vouchers, have rent control restrictions, or have units with deed restrictions to ensure future affordability. Banc of California stated that its CD affordable housing loans included loans for over 5,700 units that met the U.S. Department of Housing and Urban Development's affordable rent calculations. Further, Banc of California indicated that, although it does not have complete data regarding post-origination rents, it does not seek CRA consideration for CD loans if it determines during the underwriting process that a property owner intends to increase rents to meet its financial obligations under the loan.

Banc of California explained that its planned investment activity includes investments in a variety of entities engaged in the development of affordable housing for LMI individuals, small business financing and development, and the revitalization and stabilization of LMI geographies.

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<sup>7</sup> This comment letter was withdrawn after the commenters and the Banc of California reached an agreement related to the bank's future CRA activities.

Patrick S. Brown  
Sullivan & Cromwell LLP  
Banc of California, National Association  
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Further, Banc of California represented that it invests and will continue to invest, as appropriate, in: (1) targeted mortgage-backed securities that support affordable housing; and (2) qualifying tax credit vehicles, including low-income housing tax credit, historic rehabilitation tax credit, and new markets tax credit programs.

Banc of California also noted since 2018, it has invested over \$100 million with companies that support the creation or retention of affordable housing in its assessment areas. Banc of California asserted that a commenter's statement that its CD lending had declined during the period from 2018 to 2020, without additional context, was misleading. Banc of California noted that it had reduced its entire balance sheet during the same time period from \$10.6 billion in 2016 to \$7.9 billion in 2020 and that CRA expenditures have kept pace.

Banc of California's most recent CRA PE noted an excellent level of CD lending and qualified CD investments in both the Los Angeles MSA and the San Diego MSA. Its CD lending for the period January 1, 2018, to December 31, 2020, will be reviewed in the upcoming evaluation.

#### Fee Income as Compared to Charitable Contributions

Commenters stated that Banc of California's fee income exceeded its philanthropic giving in 2020. Commenters said that Banc of California assessed \$585,170 in overdraft fees in 2020, including during the Covid-19 pandemic while other banks were reconsidering overdraft fees. Furthermore, although commenters expressed appreciation for Banc of California's origination of 2,075 Paycheck Protection Program (PPP) loans, they noted that Banc of California had not committed to devoting fees earned on these loans to philanthropic activities. Commenters stated that the fees Banc of California earned on PPP loans and Banc of California's \$300 million in annual revenue for 2020 dwarfed Banc of California's philanthropy.

In response to the public comments, Banc of California asserted that its overdraft fees as a percentage of income is far below industry average. Additionally, Banc of California stated that, as a part of its pandemic response, it lowered the maximum number of overdraft fees charged in a single day from five to two. Banc of California also noted that it offers an overdraft protection plan, which may help certain customers minimize overdraft fees. With respect to commenters' assertions about the fee income Banc of California earned on PPP loans, Banc of California indicated that it invested considerable time and resources in setting up and administering its PPP program. It noted that while some of the largest banks have committed to donate some or all their PPP fees, its choice to retain such fees is consistent with what it believes to be the approach of the majority of the banking industry.

Banc of California asserted that it remains committed to devoting significant resources to contributions and plans to increase philanthropic contributions in 2021 and 2022. In response to the Covid-19 pandemic, Banc of California noted it worked closely with multi-family credit clients to provide support, including loan forbearance. Banc of California also stated that community organizations that combat homelessness and provide supportive and transitional housing are the primary focus of its community involvement and support and that intends to

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continue to place a heavy emphasis on these types of community support efforts. Additionally, Banc of California indicated that it supports organizations that provide financial literacy programing, including by hosting those organizations, and, through its CD efforts, supports developers of color by investing in nonprofit housing and organizations led by people of color.

The CRA does not require Banc of California to engage in any particular level or type of philanthropic activity. All of its efforts to support its communities that receive consideration under the CRA will be reviewed in the upcoming CRA evaluation.

### Mortgage Loan Purchases

Commenters expressed concern that the bulk of Banc of California's mortgage loan purchases are in White and upper-income areas. For example, for the first quarter of 2020, commenters note that Banc of California originated two loans in the Los Angeles MSA to upper-income White borrowers in upper-income, White census tracts and purchased 50 loans, 82.7% of which were in upper-income census tracts and 80% of which were in White neighborhoods.

With respect to Banc of California's HMDA-reportable lending, the OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution engaged in lending discrimination, nor do they reflect the full range of an institution's lending activities and efforts. However, disparities in mortgage lending that are correlated with prohibited basis characteristics are of concern to the OCC, and the OCC monitors HMDA data reported by institutions it regulates to determine those institutions that exhibit increased fair lending risk. Banc of California is subject to the OCC's ongoing supervisory program to monitor fair lending risk and compliance with the Equal Credit Opportunity Act, Fair Housing Act, and their implementing regulations.<sup>8</sup>

Further, as previously noted, on its 2018 CRA PE, the OCC rated Banc of California's performance on the lending test "High Satisfactory." The OCC found that Banc of California's geographic distribution of home mortgage loan originations/purchases was "Excellent" overall and in both the Los Angeles MSA and the San Diego MSA. Banc of California's borrower distribution of home mortgage loan originations/purchases was "adequate" overall and in both the Los Angeles MSA and the San Diego MSA. A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices.<sup>9</sup> In determining the effect of evidence of discriminatory or illegal credit practices in a bank's CRA lending activities on the bank's evaluation and assigned CRA rating, the OCC considers the following factors: (1) the nature, extent, and strength of the evidence of the practices; (2) the policies and procedures that the bank has in place to prevent the practices; (3) any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and (4) any other relevant information.<sup>10</sup> Any discriminatory or other illegal credit practices that

<sup>8</sup> 15 USC 1691 *et seq.*; 12 CFR Part 1002; 42 USC 3601 *et seq.*; 24 CFR Part 100.

<sup>9</sup> 12 CFR 25.17.

<sup>10</sup> 12 CFR 25.17(b).



Patrick S. Brown  
Sullivan & Cromwell LLP  
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were identified after the issuance of the previous CRA PE will be considered in the upcoming CRA evaluation.

In response to commenters' concerns regarding the demographics associated with Banc of California's 2020 loan purchases, Banc of California confirmed that it exited the single-family residential mortgage origination business in 2018 and stopped originating single family mortgage loans in 2019. Further, after Banc of California sold its primary consumer residential division, Banc Home Loans, in spring of 2017, it was subject to a three-year non-compete provision that restricted Banc of California's ability to originate some types of loans, including Federal Housing Administration, Veterans Affairs, U.S. Department of Agriculture, and government-sponsored enterprise loans.

### Branching

Commenters expressed concern that Banc of California has been closing branches in recent years, including in LMI and majority minority areas. Specifically, commenters stated that Banc of California has closed four branches between 2017 and 2020 and that two of these branches were in LMI areas and one was in a neighborhood of color. Commenters noted that Banc of California's application stated that they plan to close two additional branches if the merger is approved.

In response to the comments, Banc of California stated that it closed or consolidated eight branches between 2018 and 2020, but that three of the branches were relocated in the same neighborhood and that only one of the eight closed branches was in an LMI census tract. Banc of California stated that during the same time period, it opened four new branches, two of which were in majority minority census tracts. Banc of California also asserted that 24% of its branches in Los Angeles County and Orange County are in LMI census tracts and that 48% of those branches are in majority minority census tracts. Banc of California also provided an update on its plans to close or consolidate one branch rather than two branches in connection with the merger. Furthermore, Banc of California indicated that the branch it intends to consolidate operates in close proximity to an existing branch, which will serve the clients of the combined institution.

### Diversity

Commenters commended Banc of California for sharing its diversity data but expressed disappointment regarding the low number of persons of color and women on its Board and in senior level management positions. They also expressed concern with Banc of California's tracking of diverse spending and the low percentage of Banc of California's procurement activities in California that benefit certified Minority, Women, and Disadvantaged Business Enterprises.

In response to the public comments, Banc of California asserted that it promotes diversity internally, including an employee-led diversity committee and that it employs a majority women employee base, including three senior members of its executive team. Banc of California stated it

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is committing resources to further invest in sourcing and developing a diverse team and leadership base. Banc of California also asserted supplier diversity is an important priority and that it intends to expand its supplier diversity work. Additionally, Banc of California stated that it intends to increase its efforts to track and support ethnic media spending.

#### CRA Plan and Suggested Activities and Programs

Commenters stated that Banc of California has not established that it will meet the convenience and needs of communities. All commenters stated that they had previously provided Banc of California with specific recommendations for how it could better meet community credit needs, but that Banc of California declined to commit to any of these recommendations. Commenters included these recommendations in their letters. Examples included: (i) opening of two new branches in minority neighborhoods; (ii) increasing in small business lending; (iii) developing of a small business Special Purpose Credit Program (SPCP); (iv) developing a formalized referral program for small business loan declinations; (v) setting goals for diversity business spending and board diversity; (vi) purchasing LMI mortgages; (vii) increasing CD lending for affordable housing; (viii) increasing the ratio of CD investments to CD lending; and (ix) increasing annual grants as compared to deposits.

As previously noted, on its 2018 CRA PE, the OCC assigned Banc of California an overall rating of “Satisfactory” and rated it “High Satisfactory” for both the lending test and service test and “Outstanding” for the investment test. Although under the CRA the OCC evaluates a bank’s record of meeting the credit needs of its entire community, the CRA does not require banks to engage in any particular type of activity or to enter agreements with third parties.<sup>11</sup>

In response to the public comments, Banc of California stated that, after the merger, its greater resources will allow the combined institution to serve the convenience and needs of its communities, including Pacific Mercantile’s community. Banc of California noted that Pacific Mercantile’s customers would benefit from Banc of California’s small business lending program that offers loans to small businesses in amounts as low as \$10,000. Banc of California also highlighted its CRA activities since its last CRA PE. In particular, Banc of California represented that from 2018 to 2020, it made over \$104 million in CD investments, more than \$1.2 billion in CD lending, over \$225 million in small business CRA loans in California, its employees contributed nearly 5,000 volunteer and service hours, provided \$2.4 million in grants, donations and sponsorships to community programs, including LMI services, economic development and affordable housing organizations.

In response to the specific actions and activities commenters recommended, Banc of California stated that it is eager to receive constructive input from its communities and will continue its active dialogue with community groups as it develops its own comprehensive CRA plan. Banc of California stated that it has maintained a focus on affordable housing in its CRA investment

<sup>11</sup> “Interagency Questions and Answers Regarding Community Reinvestment,” 81 Fed. Reg. 48,506 (July 25, 2016) (Q&A § \_\_.29(b) -2).

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portfolio and has engaged in meaningful affordable housing investments, including \$44 million to support affordable housing via Low Income Housing Tax Credit, Preservation and Affordable Housing funds.

Banc of California's response to the public comments also emphasized its commitment to Small Business Administration lending. Banc of California stated that in 2021 year-to-date, over 50% of its small business loans, measured by number of units, have been in amounts less than \$150,000. Banc of California represented that it continues to see an increase in small business loans to businesses with less than \$1 million in revenue, up to 39% year-to date, and that it expects to continue to grow such loans as a percentage of all small business loans in the coming years. In response to the suggestion that Banc of California develop a formalized referral program for small business loan declinations, Banc of California stated that its relationship managers work one-on-one with small business clients that are not eligible for its products and in some cases refer them to other organizations that may better suit their needs. Banc of California asserted that it intends to consider options that would facilitate and enhance these efforts going forward, including developing a formalized referral program. Banc of California also stated that it is striving to increase its participation in Small Business Administration and state guaranteed loan programs and is considering the possibility of developing a SPCP program in the future.

#### **B. Requests for Extension of Comment Period and Public Hearing**

All opposing commenters also requested that if the OCC does not deny the application, it extend the comment period to allow additional time to conduct research and further assess the concerns they noted along with Banc of California's CRA activity and plans. The standard that applies to determine whether to extend the comment period is set forth in 12 CFR 5.10(b)(2). The OCC may extend a comment period if a person requesting additional time satisfactorily demonstrates that additional time is necessary to develop factual information that the OCC determines is needed for the filing, or the OCC determines that other extenuating circumstances exist.<sup>12</sup> After careful consideration, the OCC determined not to extend the public comment period. None of the reasons set forth in 12 CFR 5.10(b)(2) as justification for extending the comment period were evident in connection with this application.

#### **C. Summary of Consideration of Public Comments**

The OCC has considered all of the facts of record, including the records of the relevant depository institutions involved under the CRA, the institutions' records of compliance with fair lending and other consumer protection laws, confidential supervisory information, information provided by Banc of California and Pacific Mercantile, and the public comments on the proposal. Based upon this review, the OCC finds the facts to be consistent with approval.

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<sup>12</sup> See 12 CFR 5.10(b)(2)(ii), (iii).

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## V. Conclusion

The Western District Licensing Office must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval.

The OCC will issue a letter certifying consummation of the transaction when we receive:

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
- An executed merger agreement.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.

If the merger is not consummated within six months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, contact Director for District Licensing Yoo Jin Na at (202) 649-6335 or yoojin.na@occ.treas.gov.

Sincerely,

Stephen A. Lybarger

Digitally signed by Stephen A.  
 Lybarger  
 Date: 2021.09.30 14:32:59 -04'00'

Stephen A. Lybarger  
 Deputy Comptroller for Licensing

**EXHIBIT A**  
**Plan of Merger**

**AGREEMENT AND PLAN OF MERGER  
OF  
PACIFIC MERCANTILE BANK  
AND BANC OF CALIFORNIA, NATIONAL ASSOCIATION**

This Agreement and Plan of Merger (this "Agreement"), dated as of October 18, 2021, is adopted and made by and between BANC OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, having its main office at 3 MacArthur Place, Santa Ana, California 92707 ("BOC Bank"), and PACIFIC MERCANTILE BANK, a California state-chartered bank, having its main office at 949 South Coast Drive, Suite 300, Costa Mesa, California 92626 ("PM Bank").

WITNESSETH:

WHEREAS, BOC Bank is a national banking association, all the issued and outstanding capital stock of which is owned as of the date hereof directly by Banc of California, Inc., a Maryland corporation ("Parent");

WHEREAS, PM Bank is a California state-chartered bank, all the issued and outstanding capital stock of which is owned as of the date hereof directly by Pacific Mercantile Bancorp, a California corporation ("PM Bancorp");

WHEREAS, Parent and PM Bancorp have entered into an Agreement and Plan of Merger, dated as of March 22, 2021 (the "Parent Merger Agreement"), providing for the merger of PM Bancorp with and into Parent, with Parent as the surviving corporation, pursuant to the provisions of the Maryland General Corporation Law and the California General Corporation Law (the "Parent Merger");

WHEREAS, contingent upon the Parent Merger and promptly following the time at which the Parent Merger becomes effective, the parties to this Agreement intend to effect the merger of PM Bank with and into BOC Bank, with BOC Bank as the surviving institution (the "Bank Merger"), on the terms and subject to the conditions contained in this Agreement; and

WHEREAS, the Board of Directors of PM Bank has adopted a resolution approving this Agreement, authorizing the execution hereof and directing that this Agreement and the Bank Merger contemplated hereby be submitted to the sole shareholder of PM Bank for adoption and approval; and

WHEREAS, the Board of Directors of BOC Bank has adopted a resolution approving this Agreement and the Bank Merger, authorizing the execution hereof and directing that this Agreement hereby be submitted to the sole shareholder of BOC Bank to be ratified and confirmed.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Parent Merger Agreement, the parties hereto agree as follows:

## ARTICLE I

### Constituent Entities

BOC Bank and PM Bank shall be the constituent entities with respect to the Bank Merger.

## ARTICLE II

### Bank Merger

2.1 Bank Merger. Subject to the terms and conditions of this Agreement, effective as of the Effective Time (as defined below), PM Bank shall be merged with and into BOC Bank in accordance with Section 4880 *et seq.* of the California Financial Code ("CFC") and 12 U.S.C. § 215a, and with the effect provided in Section 4889 of the CFC, Section 1107 of the California General Corporation Law, 12 U.S.C. § 215a and 12 U.S.C. § 1828(c). At the Effective Time (as defined below), the separate existence of PM Bank shall cease, and BOC Bank, as the surviving institution (sometimes hereinafter referred to as the "Surviving Institution"), shall continue its corporate existence as a national banking association. The name of the Surviving Institution shall be "Banc of California, National Association". The parties hereto intend that the Bank Merger qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and this Agreement shall be, and is hereby adopted as, a "plan of reorganization" for purposes of Sections 354 and 361 of the Code.

2.2 Effective Time. The Bank Merger shall become effective promptly following the effective time of the Parent Merger when all of the conditions precedent to the consummation of the Bank Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof (such date and time being herein referred to as the "Effective Time").

## ARTICLE III

### Charter, Bylaws, Etc.

3.1 Articles of Incorporation. At the Effective Time, the articles of incorporation of BOC Bank in effect immediately prior to the Effective Time shall continue to be the articles of incorporation of the Surviving Institution until thereafter amended in accordance with the applicable law. The articles of incorporation of BOC Bank as in effect immediately prior to the Effective Time are set forth as Exhibit A hereto and incorporated herein by reference.

3.2 Bylaws. At the Effective Time, the bylaws of BOC Bank in effect immediately prior to the Effective Time shall continue to be the bylaws of the Surviving Institution until thereafter amended in accordance with the applicable law.

3.3 Directors. At the Effective Time, the directors of BOC Bank prior to the Effective Time will continue as the directors of the Surviving Institution, until such time as their successors shall be duly elected and qualified.

3.4 Home/Branch Offices. The home office and branch offices of BOC Bank existing immediately prior to the Effective Time shall continue to be the home office and branch offices, respectively, of the Surviving Institution. The main office of PM Bank and all branch offices of BOC Bank and PM Bank that are in lawful operation immediately prior to the Effective Time shall be the branch offices of the Surviving Institution upon consummation of the Bank Merger, subject to the consolidation of any offices that may be authorized by BOC Bank and applicable regulatory authorities after the Effective Time.

#### ARTICLE IV

##### Capital Stock

4.1 Effect on PM Bank Capital Stock. By virtue of the Bank Merger and without any action on the part of the holder of any capital stock of PM Bank, at the Effective Time, all shares of PM Bank capital stock issued and outstanding shall be automatically cancelled and retired and shall cease to exist, and no cash, new shares of common stock, or other property shall be delivered in exchange therefor.

4.2 Effect on BOC Bank Capital Stock. Each share of BOC Bank capital stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and unaffected by the Bank Merger, and such shares shall be the only capital stock of the Surviving Institution as of the Effective Time.

#### ARTICLE V

##### Effect of Bank Merger

The effect of the Bank Merger is as prescribed by law. From and after the Effective Time, and in addition to the effects under applicable law, including, without limitation 12 U.S.C. § 215a: (i) all assets and all rights, franchises, and interests of PM Bank in and to every type of property (including intellectual, real, personal, and mixed), tangible and intangible, and choses in action shall be transferred to and vested in the Surviving Institution by virtue of the Bank Merger without any deed or other transfer; (ii) the Surviving Institution, without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, and receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by PM Bank immediately prior to the Effective Time; and (iii) the Surviving Institution shall be responsible for all of the liabilities of every kind and description of PM Bank existing as of the Effective Time.



## ARTICLE VI

### Conditions to the Bank Merger

The respective obligations of each of BOC Bank and PM Bank to consummate the Bank Merger are subject to the fulfillment, or written waiver by the party entitled to satisfaction thereof prior to the Effective Time, of each of the following conditions:

(a) This Agreement shall have been ratified and approved by the written consent of the sole shareholder of each of BOC Bank and PM Bank in lieu of a meeting of shareholders, *provided*, that such action by written consent is authorized under the applicable articles of incorporation or bylaws or otherwise provided by law and each of BOC Bank and PM Bank shall have delivered an executed copy of the Officers' Certificate in the form attached hereto as Exhibit B certifying such approvals.

(b) All approvals and authorizations of, filings and registrations with, and notifications to, all governmental authorities required for the consummation of the Bank Merger shall have been obtained or made and shall be in full force and effect and all waiting periods required by law shall have expired;

(c) No governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and prohibits consummation of the transactions contemplated by this Agreement; and

(d) The Parent Merger shall have been consummated in accordance with the terms and conditions of the Parent Merger Agreement.

## ARTICLE VII

### Further Documents

If at any time the Surviving Institution shall consider or be advised that any further deeds, assignments, conveyances or assurances in law are necessary or desirable to vest, perfect or confirm of record in the Surviving Institution the title to any property or rights of the constituent entities, or otherwise to carry out the provisions hereof, the persons who were the proper officers and directors of the constituent entities immediately prior to the Effective Time (or their successors in office) shall execute and deliver any and all proper deeds, assignments, conveyances and assurances in law, and do all things necessary or desirable, to vest, perfect or confirm title to such property or rights in the Surviving Institution and otherwise to carry out the provisions hereof.

## ARTICLE VIII

### Termination

In the event that the Parent Merger Agreement is terminated pursuant to Section 7.01 thereof, this Agreement shall be terminated and the Bank Merger provided for

herein shall be abandoned automatically and without any further act or deed by the parties hereto. This Agreement also may be terminated at any time prior to the Effective Time by an instrument executed by each of the parties hereto.

## ARTICLE IX

### Miscellaneous

9.1 Representations and Warranties. Each of the parties hereto represents and warrants that this Agreement has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof.

9.2 Entire Agreement. This Agreement (including the documents and instruments referred to herein and attached hereto) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

9.3 Counterparts. This Agreement may be executed in counterparts (including by facsimile or other electronic means), each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the federal laws of the United States, without regard to choice of law principles, except to the extent that the laws of the State of California shall be applicable hereto.

9.5 Assignment. This Agreement shall not be assignable by operation of law or otherwise.

9.6 Nonsurvival of Agreements. Except for Article VII, none of the agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time or termination of this Agreement as provided in Article VIII.

9.7 Amendment. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

9.8 Notices. All notices, requests, instructions and other communications to be given hereunder by any party to the other shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation) or mailed by registered or certified mail, postage prepaid (return receipt requested), to such party at its address set forth below or such other address as such party may specify by notice to the other party.

If to PM Bank to:

c/o Pacific Mercantile Bancorp  
949 South Coast Drive, Third Floor  
Costa Mesa, California 92626  
Attention: Curt A. Christianssen, Chief Financial Officer

Facsimile: (855) 436-2416  
Email: curt.christianssen@pmbank.com

With a copy to:

Sheppard, Mullin, Richter & Hampton LLP  
650 Town Center Drive, 10<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Josh Dean  
Facsimile: (714) 428-5991  
Email: jdean@sheppardmullin.com

If to BOC Bank to:

c/o Banc of California, Inc.  
3 MacArthur Place  
Santa Ana, California 92707  
Attention: Chief Executive Officer  
With a copy to: General Counsel  
Facsimile: (877) 788-8061  
Email: jared.wolff@bancofcal.com;  
With a copy to: ido.dotan@bancofcal.com

With a copy to:

Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, California 90067  
Attention: Patrick S. Brown  
Facsimile: (310) 712-8800  
Email: brownp@sullcrom.com

*[Signature page to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the day and year first written above.

**BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: Ido Dotan  
Title: Executive Vice President,  
General Counsel

**BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: Ido Dotan  
Title: Corporate Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the day and year first written above.

**PACIFIC MERCANTILE BANK**

By: \_\_\_\_\_  
Name:  
Title:

**PACIFIC MERCANTILE BANK**

By: \_\_\_\_\_  
Name:  
Title: Corporate Secretary

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**EXHIBIT A**  
**Plan of Merger**

**AGREEMENT AND PLAN OF MERGER  
OF  
PACIFIC MERCANTILE BANK  
AND BANC OF CALIFORNIA, NATIONAL ASSOCIATION**

This Agreement and Plan of Merger (this "Agreement"), dated as of October 18, 2021, is adopted and made by and between BANC OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association, having its main office at 3 MacArthur Place, Santa Ana, California 92707 ("BOC Bank"), and PACIFIC MERCANTILE BANK, a California state-chartered bank, having its main office at 949 South Coast Drive, Suite 300, Costa Mesa, California 92626 ("PM Bank").

WITNESSETH:

WHEREAS, BOC Bank is a national banking association, all the issued and outstanding capital stock of which is owned as of the date hereof directly by Banc of California, Inc., a Maryland corporation ("Parent");

WHEREAS, PM Bank is a California state-chartered bank, all the issued and outstanding capital stock of which is owned as of the date hereof directly by Pacific Mercantile Bancorp, a California corporation ("PM Bancorp");

WHEREAS, Parent and PM Bancorp have entered into an Agreement and Plan of Merger, dated as of March 22, 2021 (the "Parent Merger Agreement"), providing for the merger of PM Bancorp with and into Parent, with Parent as the surviving corporation, pursuant to the provisions of the Maryland General Corporation Law and the California General Corporation Law (the "Parent Merger");

WHEREAS, contingent upon the Parent Merger and promptly following the time at which the Parent Merger becomes effective, the parties to this Agreement intend to effect the merger of PM Bank with and into BOC Bank, with BOC Bank as the surviving institution (the "Bank Merger"), on the terms and subject to the conditions contained in this Agreement; and

WHEREAS, the Board of Directors of PM Bank has adopted a resolution approving this Agreement, authorizing the execution hereof and directing that this Agreement and the Bank Merger contemplated hereby be submitted to the sole shareholder of PM Bank for adoption and approval; and

WHEREAS, the Board of Directors of BOC Bank has adopted a resolution approving this Agreement and the Bank Merger, authorizing the execution hereof and directing that this Agreement hereby be submitted to the sole shareholder of BOC Bank to be ratified and confirmed.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions of the Parent Merger Agreement, the parties hereto agree as follows:

**ARTICLE I****Constituent Entities**

BOC Bank and PM Bank shall be the constituent entities with respect to the Bank Merger.

**ARTICLE II****Bank Merger**

2.1 **Bank Merger.** Subject to the terms and conditions of this Agreement, effective as of the Effective Time (as defined below), PM Bank shall be merged with and into BOC Bank in accordance with Section 4880 *et seq.* of the California Financial Code ("CFC") and 12 U.S.C. § 215a, and with the effect provided in Section 4889 of the CFC, Section 1107 of the California General Corporation Law, 12 U.S.C. § 215a and 12 U.S.C. § 1828(c). At the Effective Time (as defined below), the separate existence of PM Bank shall cease, and BOC Bank, as the surviving institution (sometimes hereinafter referred to as the "Surviving Institution"), shall continue its corporate existence as a national banking association. The name of the Surviving Institution shall be "Banc of California, National Association". The parties hereto intend that the Bank Merger qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and this Agreement shall be, and is hereby adopted as, a "plan of reorganization" for purposes of Sections 354 and 361 of the Code.

2.2 **Effective Time.** The Bank Merger shall become effective promptly following the effective time of the Parent Merger when all of the conditions precedent to the consummation of the Bank Merger specified in this Agreement shall have been satisfied or duly waived by the party entitled to satisfaction thereof (such date and time being herein referred to as the "Effective Time").

**ARTICLE III****Charter, Bylaws, Etc.**

3.1 **Articles of Incorporation.** At the Effective Time, the articles of incorporation of BOC Bank in effect immediately prior to the Effective Time shall continue to be the articles of incorporation of the Surviving Institution until thereafter amended in accordance with the applicable law. The articles of incorporation of BOC Bank as in effect immediately prior to the Effective Time are set forth as Exhibit A hereto and incorporated herein by reference.

3.2 **Bylaws.** At the Effective Time, the bylaws of BOC Bank in effect immediately prior to the Effective Time shall continue to be the bylaws of the Surviving Institution until thereafter amended in accordance with the applicable law.

3.3 **Directors.** At the Effective Time, the directors of BOC Bank prior to the Effective Time will continue as the directors of the Surviving Institution, until such time as their successors shall be duly elected and qualified.



3.4 Home/Branch Offices. The home office and branch offices of BOC Bank existing immediately prior to the Effective Time shall continue to be the home office and branch offices, respectively, of the Surviving Institution. The main office of PM Bank and all branch offices of BOC Bank and PM Bank that are in lawful operation immediately prior to the Effective Time shall be the branch offices of the Surviving Institution upon consummation of the Bank Merger, subject to the consolidation of any offices that may be authorized by BOC Bank and applicable regulatory authorities after the Effective Time.

#### ARTICLE IV

##### Capital Stock

4.1 Effect on PM Bank Capital Stock. By virtue of the Bank Merger and without any action on the part of the holder of any capital stock of PM Bank, at the Effective Time, all shares of PM Bank capital stock issued and outstanding shall be automatically cancelled and retired and shall cease to exist, and no cash, new shares of common stock, or other property shall be delivered in exchange therefor.

4.2 Effect on BOC Bank Capital Stock. Each share of BOC Bank capital stock issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and unaffected by the Bank Merger, and such shares shall be the only capital stock of the Surviving Institution as of the Effective Time.

#### ARTICLE V

##### Effect of Bank Merger

The effect of the Bank Merger is as prescribed by law. From and after the Effective Time, and in addition to the effects under applicable law, including, without limitation 12 U.S.C. § 215a: (i) all assets and all rights, franchises, and interests of PM Bank in and to every type of property (including intellectual, real, personal, and mixed), tangible and intangible, and choses in action shall be transferred to and vested in the Surviving Institution by virtue of the Bank Merger without any deed or other transfer; (ii) the Surviving Institution, without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, and receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by PM Bank immediately prior to the Effective Time; and (iii) the Surviving Institution shall be responsible for all of the liabilities of every kind and description of PM Bank existing as of the Effective Time.

## ARTICLE VI

### Conditions to the Bank Merger

The respective obligations of each of BOC Bank and PM Bank to consummate the Bank Merger are subject to the fulfillment, or written waiver by the party entitled to satisfaction thereof prior to the Effective Time, of each of the following conditions:

(a) This Agreement shall have been ratified and approved by the written consent of the sole shareholder of each of BOC Bank and PM Bank in lieu of a meeting of shareholders, *provided*, that such action by written consent is authorized under the applicable articles of incorporation or bylaws or otherwise provided by law and each of BOC Bank and PM Bank shall have delivered an executed copy of the Officers' Certificate in the form attached hereto as Exhibit B certifying such approvals.

(b) All approvals and authorizations of, filings and registrations with, and notifications to, all governmental authorities required for the consummation of the Bank Merger shall have been obtained or made and shall be in full force and effect and all waiting periods required by law shall have expired;

(c) No governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and prohibits consummation of the transactions contemplated by this Agreement; and

(d) The Parent Merger shall have been consummated in accordance with the terms and conditions of the Parent Merger Agreement.

## ARTICLE VII

### Further Documents

If at any time the Surviving Institution shall consider or be advised that any further deeds, assignments, conveyances or assurances in law are necessary or desirable to vest, perfect or confirm of record in the Surviving Institution the title to any property or rights of the constituent entities, or otherwise to carry out the provisions hereof, the persons who were the proper officers and directors of the constituent entities immediately prior to the Effective Time (or their successors in office) shall execute and deliver any and all proper deeds, assignments, conveyances and assurances in law, and do all things necessary or desirable, to vest, perfect or confirm title to such property or rights in the Surviving Institution and otherwise to carry out the provisions hereof.

## ARTICLE VIII

### Termination

In the event that the Parent Merger Agreement is terminated pursuant to Section 7.01 thereof, this Agreement shall be terminated and the Bank Merger provided for

herein shall be abandoned automatically and without any further act or deed by the parties hereto. This Agreement also may be terminated at any time prior to the Effective Time by an instrument executed by each of the parties hereto.

## ARTICLE IX

### Miscellaneous

9.1 Representations and Warranties. Each of the parties hereto represents and warrants that this Agreement has been duly authorized, executed and delivered by such party and constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with the terms hereof.

9.2 Entire Agreement. This Agreement (including the documents and instruments referred to herein and attached hereto) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

9.3 Counterparts. This Agreement may be executed in counterparts (including by facsimile or other electronic means), each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the federal laws of the United States, without regard to choice of law principles, except to the extent that the laws of the State of California shall be applicable hereto.

9.5 Assignment. This Agreement shall not be assignable by operation of law or otherwise.

9.6 Nonsurvival of Agreements. Except for Article VII, none of the agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time or termination of this Agreement as provided in Article VIII.

9.7 Amendment. This Agreement may not be amended, except by an instrument in writing signed on behalf of each of the parties hereto.

9.8 Notices. All notices, requests, instructions and other communications to be given hereunder by any party to the other shall be in writing and shall be deemed given if personally delivered, telecopied (with confirmation) or mailed by registered or certified mail, postage prepaid (return receipt requested), to such party at its address set forth below or such other address as such party may specify by notice to the other party.

If to PM Bank to:

c/o Pacific Mercantile Bancorp  
949 South Coast Drive, Third Floor  
Costa Mesa, California 92626  
Attention: Curt A. Christianssen, Chief Financial Officer

Facsimile: (855) 436-2416  
Email: [curt.christianssen@pmbank.com](mailto:curt.christianssen@pmbank.com)

With a copy to:

Sheppard, Mullin, Richter & Hampton LLP  
650 Town Center Drive, 10<sup>th</sup> Floor  
Costa Mesa, CA 92626  
Attention: Josh Dean  
Facsimile: (714) 428-5991  
Email: [jdean@sheppardmullin.com](mailto:jdean@sheppardmullin.com)

If to BOC Bank to:

c/o Banc of California, Inc.  
3 MacArthur Place  
Santa Ana, California 92707  
Attention: Chief Executive Officer  
With a copy to: General Counsel  
Facsimile: (877) 788-8061  
Email: [jared.wolff@bancofcal.com](mailto:jared.wolff@bancofcal.com);  
With a copy to: [ido.dotan@bancofcal.com](mailto:ido.dotan@bancofcal.com)

With a copy to:

Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, California 90067  
Attention: Patrick S. Brown  
Facsimile: (310) 712-8800  
Email: [brownp@sullcrom.com](mailto:brownp@sullcrom.com)

*[Signature page to follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the day and year first written above.

**BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: Ido Dotan  
Title: Executive Vice President,  
General Counsel

**BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Name: Ido Dotan  
Title: Corporate Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective officers thereunto duly authorized as of the day and year first written above.

**PACIFIC MERCANTILE BANK**

By: \_\_\_\_\_  
Name:  
Title:

**PACIFIC MERCANTILE BANK**

By: \_\_\_\_\_  
Name:  
Title: Corporate Secretary

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C4810536 BANC OF CALIFORNIA, NATIONAL  
ASSOCIATION

C2125962 PACIFIC MERCANTILE BANK