

BEFORE THE ) IN RE: APPLICATION OF MORRIS  
SECRETARY OF STATE ) STATE BANCSHARES, INC.  
OF GEORGIA ) PURSUANT TO SECTION 10-5-11(9) OF  
) THE GEORGIA UNIFORM SECURITIES  
) ACT OF 2008

---

### **Findings of Fact and Order of Approval**

The above-referenced application (the "Application"), having been considered by the Secretary of State of Georgia as the Commissioner of Securities of the State of Georgia, acting by and through the undersigned (the "Commissioner"), and the Commissioner, having received the Application and having reviewed the same and the Appendices thereto, and after conducting the hearing as requested thereunder and as authorized by Section 10-5-11(9) of the Georgia Uniform Securities Act of 2008 (the "Act") and the Rules promulgated thereunder, and having received proof of the proper notice of said hearing was given to all persons entitled thereto on a timely basis, makes the following findings of fact and enters the following order:

1. Morris State Bancshares, Inc., a Georgia corporation and a bank holding company registered with the Board of Governors of the Federal Reserve System, headquartered in Dublin, Georgia ("Buyer"), filed the Application on January 17, 2019, pursuant to Section 10-5-11(9) of the Act. The Application is for approval of the issuance of shares of Buyer's common stock, \$1.00 par value per share (the "Buyer Common Stock"), and cash in exchange for all of the outstanding shares of common stock, \$1.00 par value per share, and preferred stock, \$1.00 par value per share (collectively, the "Seller Stock"), of FMB Equibanc, Inc., a Georgia corporation and a bank holding company registered with the Board of Governors of the Federal Reserve System, headquartered in Statesboro, Georgia ("Seller"). Such issuance will occur in connection with the proposed merger (the "Merger") of Seller with and into Buyer. The Merger will be effected pursuant to the Agreement and Plan of Merger, dated as of December 11, 2018, by and between Buyer and Seller (the "Merger Agreement").
2. At the effective time of the Merger, Seller will merge with and into Buyer, the separate existence of Seller will cease, and the corporate existence of Buyer will continue. Each outstanding share of Seller Stock will be converted into the right to receive (i) cash in the amount of \$9.25 (the "Per Share Cash Consideration") or (ii) 0.1423 shares of Buyer Common Stock (the "Per Share Stock Consideration" and, together with the Per Share Cash Consideration, the "Merger Consideration"); *provided, however*, that between 30% and 50% of Seller Stock to be converted as a result of the Merger will be converted into cash and the remaining 50% to 70% will be exchanged for Buyer Common Stock. The Buyer Common Stock will be issued at a valuation of \$65.00 per share. Immediately prior to the effective time of the Merger, and in accordance with the terms of the Class A Preferred Stock

provided in Seller's articles of incorporation, as amended, each share of Seller Class A Preferred Stock shall automatically convert into one share of Seller common stock. As a result, each share of Seller Class A Preferred Stock shall be treated equally to each share of Seller common stock with respect to the Merger Consideration (subject to the election and allocation procedures). Holders of Seller Stock will be entitled to elect the form of Merger Consideration they prefer to receive in the Merger. After receiving all such elections, Buyer will allocate the Merger Consideration such that between 50% to 70% of the shares of Seller Stock will be exchanged for Buyer Common Stock. Additionally, Seller shareholders who would be entitled to receive fewer than ten (10) shares or a fractional share of Buyer Common Stock as a result of the Merger shall receive, in lieu of such shares or fractional share of Buyer Common Stock, cash in an amount equal to such number of shares or fractional share of Buyer Common Stock multiplied by \$65.00.

3. The Commissioner has authority to consider Buyer's Application. Buyer's issuance and delivery, in connection with the Merger, of shares of Buyer Common Stock to the holders of Seller Stock constitutes "A transaction in a security . . . in exchange for one or more bona fide outstanding securities, claims, or property interests or partly in such exchange and partly for cash . . ." within the meaning of Section 10-5-11(9) of the Act.
4. Section 10-5-11(9) was adopted from and contains the same language as Section 202(9) of the Uniform Securities Act of 2002. Official Comment 10 to the Uniform Securities Act of 2002 provides in pertinent part as follows "Section 202(9) provides a state counterpart to the exemption in Section 3(a)(10) of the Securities Act of 1933."
5. Buyer has advised the Commissioner that Buyer's issuance of shares of Buyer Common Stock to the holders of Seller Stock as described above is a transaction which involves the issuance and exchange of securities, which, if approved by the Commissioner, is intended to be exempt from the registration requirements of the federal securities laws under Section 3(a)(10) of the Securities Act of 1933, as amended (the "Securities Act"). Buyer intends to rely upon Section 3(a)(10) if the transaction is approved by the Commissioner.
6. Buyer is a Georgia corporation headquartered in Dublin, Georgia. Seller is a Georgia corporation headquartered in Statesboro, Georgia. Buyer's offer to exchange its securities for the shares of Seller Stock was made from Georgia and the sale, issuance, and delivery of the shares of Buyer Common Stock in the Merger will be initiated from Georgia and consummated at a closing to be held in Georgia pursuant to the Merger Agreement. In addition, 392 record and beneficial owners of Seller Stock, who constitute 66.9% of the overall number of holders of Seller Stock holding in the aggregate approximately 79.8% of the outstanding Seller Stock, are residents of Georgia. The Buyer Common Stock is not publicly traded. The Commissioner has jurisdiction over Buyer's issuance and delivery of securities pursuant to Section 10-5-11(9) of the Act and the Rules promulgated thereunder

and is authorized to hold a hearing on and to thereafter approve the terms and conditions of Buyer's issuance of shares of Buyer Common Stock in exchange for Seller Stock and the fairness of such terms and conditions.

7. The Seller shareholders are required to approve the Merger under Georgia law, and Seller intends to hold a meeting of its shareholders for that purpose.
8. In connection with seeking the approval of the Application, on March 4, 2019, Buyer and Seller sent to each of the Seller shareholders, by United States mail, postage prepaid, a Shareholders' Notice of Fairness Hearing (the "Notice of Hearing"), which Notice of Hearing included information about the Merger, the Merger Agreement and the parties, and informed the Seller shareholders that the Application and supporting documentation annexed thereto was available for inspection at the office of the Commissioner and the principal offices of Buyer and Seller.
9. As described in the Notice of Hearing, the hearing requested by the Application was held before the Commissioner on March 22, 2019 at 2:00 p.m., pursuant to Section 10-5-11(9) of the Act, at least ten business days after the Application was filed with the Commissioner. All persons to whom Buyer proposes to issue shares of Buyer Common Stock in consummation of the Merger had the right to appear and be heard at the hearing. No one was prevented from appearing by action of Buyer, Seller or the Commissioner. Evidence and testimony relating to the proposed exchange was presented to the Commissioner.
10. As provided by the Merger Agreement, the exchange of securities pursuant to the Merger Agreement will be accomplished as soon as reasonably practicable after the effective time of the Merger.
11. In the course of negotiations, both Buyer and Seller were represented by counsel experienced in commercial transactions similar to the Merger, and by financial advisors with experience in such transactions. Each of the boards of directors of Buyer and Seller approved the terms and conditions of the Merger Agreement and of the Merger by vote of those present at a meeting of such board (at which a quorum was present). The parties testified that the terms and conditions of the Merger Agreement and of the Merger are the result of arm's length negotiations under circumstances in which the boards of directors of each party to the Merger Agreement were positioned to act in the best interest of their respective corporation and shareholders, and there is no evidence to the contrary.
12. Spence Mullis, President and CEO of Buyer, testified that the Merger will benefit Buyer in that it is expected to expand Buyer's footprint in the Middle Georgia area through the addition of Seller's three branches in Bulloch County. Brett Morgan, President and CEO of Seller, testified that the Merger will benefit the holders of capital stock of Seller that receive Buyer Common Stock in that they will acquire an interest in a larger corporation with greater financial resources and a stronger

market position. Mr. Morgan further testified that the Merger will benefit the holders of capital stock of Seller that receive cash from Buyer as it will provide such holders with immediate liquidity.

13. Shareholders holding a majority of the issued and outstanding Seller Stock are required to approve the terms and conditions of the Merger Agreement. Seller shareholders who oppose the Merger may exercise appraisal rights pursuant to Georgia law and seek to obtain payment of the fair value of their shares.
14. Seller's shareholders will receive proxy materials in connection with the Special Meeting of Shareholders to be held for considering approval of the Merger. These materials will include:
  - Notice of the Special Meeting of Shareholders, including the matters to be decided, and the date, time, and place of the meeting;
  - A recommendation of the board of directors of Seller that the Shareholders vote "FOR" approval of the Merger Agreement and the Merger;
  - A description of the terms and conditions of the Merger and a copy of the Merger Agreement;
  - A description and a copy of the fairness opinion issued by FIG Partners, LLC with respect to whether, in its opinion, the consideration to be provided to shareholders of Seller is fair from a financial point of view; and
  - A proxy card providing the shareholders with the opportunity to vote "FOR" or "AGAINST" approval of the Merger Agreement and the Merger.
15. Sufficient information has been provided to the Commissioner to permit the Commissioner to determine the relative value of the securities to be exchanged and the securities to be issued in the Merger.
16. The terms and conditions of the Merger and the Merger Agreement and the issuance and delivery of shares of Buyer Common Stock to the holders of Seller Stock as contemplated by the Merger Agreement are determined to be both procedurally and substantively fair and reasonable within the purview of the Act to Buyer, Seller, and the holders of Seller Stock.

*[Remainder of this page intentionally left blank]*

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the terms and conditions of the Merger Agreement providing for the issuance of shares of Buyer Common Stock to the holders of Seller Stock substantially upon the terms described herein and in the Application, are determined to be both procedurally and substantively fair and reasonable within the purview of the Act to the holders of Seller Stock; and the terms and conditions of the Merger Agreement and the procedural and substantive fairness thereof are hereby approved by the Commissioner in accordance with and pursuant to the authority conferred on him by Section 10-5-11(9) of the Georgia Uniform Securities Act of 2008 and the regulations promulgated thereunder.

This 26<sup>th</sup> day of March, 2019.

**BRAD RAFFENSPERGER,  
COMMISSIONER OF SECURITIES  
STATE OF GEORGIA**

By:   
\_\_\_\_\_  
**C. Ryan Germany  
Assistant Commissioner of Securities**