

Congress of the United States

Washington, DC 20510

December 13, 2019

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation (FDIC)
550 17th Street, N.W.
Washington, D.C. 20429

Dear Chairman McWilliams

We write to request that you provide greater insight into your decision to approve the merger of Bank Branching and Trust Company (BB&T) and SunTrust Bank, Inc (SunTrust), creating the sixth largest bank in the United States and the first new big Too Big To Fail Bank since the financial crisis. The approval process largely occurred behind closed-doors, and only limited information as to how your agency evaluated the costs and benefits of the transaction to consumers has been made public. The creation of a new bank with almost \$450 billion worth of assets¹ has broad implications for working families, their communities and U.S. financial system, and consumers deserve to know exactly how these decisions are made by your agency.

BB&T and SunTrust announced their intent to merge on February 7, 2019.² Following contingent approval from the Department of Justice (DOJ)³, the Federal Reserve Board (the Fed or the Board) and the Federal Deposit Insurance Corporation (FDIC) unanimously voted to approve the merger, in separate closed door sessions on November 19, 2019.⁴ On December 6, 2019, the deal officially closed, forming Truist Financial Corporation (Truist).⁶ This merger

¹ American Banker, "Three takeaways from regulators' approval of the BB&T-SunTrust merger," Jim Dobbs, November 20, 2019, <https://www.americanbanker.com/news/three-takeaways-from-regulators-approval-of-the-bb-t-suntrust-merger>

² CNBC, "BB&T to buy SunTrust in all-stock deal worth \$66 billion that will create the sixth-largest US bank," February 7, 2019, <https://www.cnbc.com/2019/02/07/bbt-and-suntrust-to-combine-in-an-all-stock-merger-of-66-billion.html>

³ U.S. Department of Justice, "Justice Requires Divestitures in Order for BB&T and SunTrust to Proceed with Merger," press release, November 8, 2019, <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-order-bbt-and-suntrust-proceed-merger>

⁴ Federal Deposit Insurance Corporation, "FDIC Approves the Merger Between BB&T and SunTrust," press release, November 19, 2019, <https://www.fdic.gov/news/news/press/2019/pr19111.html>

⁵ Board of Governors of the Federal Reserve System, "Closed Board Meeting on November 19, 2019," <https://www.federalreserve.gov/aboutthefed/boardmeetings/20191119closed.htm>

⁶ Atlanta Business Chronicle, "Sunset for a brand: SunTrust name will begin to disappear today," David Allison, December 9, 2019, <https://www.bizjournals.com/atlanta/news/2019/12/09/sunset-for-a-brand-suntrust-name-will-begin-to.html>

created the sixth largest bank, the eighth largest bank holding company, and represents the largest transaction between two banks since the financial crisis.⁷

With the press release announcing the approval of the merger, the Fed and the FDIC each released Orders for Approval that outlined your agency's justifications for allowing the transaction to proceed.⁸ The Bank Merger Act and the Bank Holding Company Act require the Board and the FDIC to consider a variety of separate factors when evaluating a merger application,⁹ including (1) whether the merger will create local monopolies for banking services; (2) whether the merged bank will be well managed; (3) whether the new bank creates risk to the financial system; and (4) the merger's effects on the public, including consumers.¹⁰

In practice, financial regulators approve mergers based on an inadequate competition analysis and often pre-review the merger in secret with banks before the banks formally apply to merge. As a result, the merger review practice lacks analytical rigor, and regulators serve as rubber stamps. Data from the Federal Reserve indicates that of the 3,819 merger applications filed from 2006 to 2017, none were declined.¹¹ Despite once claiming that the merger review process that created Truist would be "extraordinarily rigorous,"¹² BB&T CEO Kelly King recently altered his characterization, instead claiming that the regulatory process was "basically frictionless," and that he was "told by several senior regulators there was no legal reason to object to the deal."¹³

Bank mergers should be subject to rigorous review to ensure that they do not represent threats to consumers, workers, or the economy—especially during periods of accelerating financial industry consolidation, or when the merging banks risk the formation of a "too big to fail" institution. The BB&T and SunTrust deal, from the pre-approval process to the final approval, does not meet that standard. That is why we introduced the Bank Merger Review Modernization Act. This bill would reform the bank merger process in several important ways, including by giving the Consumer Financial Protection Bureau (CFPB) the power to sign off on mergers, requiring regulators to evaluate the financial stability implications of the merger, strengthening transparency by limiting "back room" meetings between banks and regulators, and clarifying that only institutions with the highest Community Reinvestment Act ratings may merge. These changes would ensure that regulators put consumers first when considering mergers, and not just as an afterthought to an agreement that has already been given an informal nod of approval.

⁷ CNBC, "BB&T to buy SunTrust in all-stock deal worth \$66 billion that will create the sixth-largest US bank," February 7, 2019, <https://www.cnbc.com/2019/02/07/bbt-and-suntrust-to-combine-in-an-all-stock-merger-of-66-billion.html>

⁸ Federal Reserve System, "Order Approving the Merger of Bank Holding Companies," <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

⁹ 12 U.S.C. 1842

¹⁰ Id.

¹¹ Letter from Chairman Jerome H Powell to Senator Elizabeth Warren, May 10, 2018, <https://www.warren.senate.gov/imo/media/doc/Powell%20Response%20re%20Mergers.pdf>

¹² House Committee on Financial Services, "The Next Megabank? Examining the Proposed Merger of SunTrust and BB&T," July 24, 2019

¹³ American Banker, "Truist rising: With megamerger done, pressure to deliver," Paul Davis, December 09, 2019, <https://www.americanbanker.com/news/truist-rising-with-megamerger-done-pressure-on-to-deliver>

The FDIC's Statement of Policy for merger approvals pursuant to the Bank Merger Act lists various standards that the FDIC will apply when evaluating a merger transaction.¹⁴ While the FDIC released the Order and Basis for Corporation Approval along with the press release that the merger had been approved, the document is only nineteen pages long and does not provide sufficient details warranted by a transaction that created the sixth largest commercial bank in the United States and the largest bank regulated by the FDIC.¹⁵

Competitive Factors

1. The FDIC evaluated how the transaction would affect competition in 81 geographic markets.¹⁶ These geographic markets are the areas used to measure the concentration of the relevant banking products.
 - a. How were these geographic markets defined?
 - i. Are these the same geographic market definitions that the FDIC has used in evaluating previous merger applications?
 - b. Were the definitions of any predefined markets altered from the time the merger application was filed to the time of the merger approval?
2. According to the Statement of Policy, the FDIC considers the extent of existing competition "in the relevant product market(s) within the relevant geographic market(s)."¹⁷ However, in the Approval Order, the FDIC only discussed the concentration levels of deposits, rather than the full complement of relevant product markets.
 - a. What product markets did the FDIC use for its concentration analysis?
 - b. For each product market, please describe the source of the data used for the analysis. If proxies or estimates were used, please specify.
3. According to the Approval Order, in 14 of the geographic markets that the FDIC considered, the Herfindahl-Hirschman Index (HHI) levels for deposits would exceed one

¹⁴ Federal Deposit Insurance Corporation, "FDIC Statement of Policy on Bank Merger Transactions," <https://www.fdic.gov/regulations/laws/rules/5000-1200.html#fdic5000fdicso2>

¹⁵ Federal Deposit Insurance Corporation, "Order and Basis for Corporation Approval," <https://www.fdic.gov/news/news/press/2019/pr19111a.pdf>

¹⁶ Id.

¹⁷ Federal Deposit Insurance Corporation, "FDIC Statement of Policy on Bank Merger Transactions," <https://www.fdic.gov/regulations/laws/rules/5000-1200.html#fdic5000fdicso2>

or both of the 1800/200 thresholds, meaning that the expected change in market concentration is significant.¹⁸

- a. For the six markets where credit unions or thrifts mitigated the competitive concerns, please identify which credit unions and thrifts were included in the analysis, the dollar amount of their deposits, and any weights used for these institutions.
 - i. Unlike banks and thrifts, credit unions are not required to report deposits on a branch-level. Please indicate how the FDIC obtained the deposit levels for credit union branches. If estimates were used, please describe the methodology.
- b. For the eight markets with divestitures, do any of these markets still approach either of the HHI thresholds even after considering the divestitures? If so, please indicate the geographic market and the HHI-levels before and after the merger.

Prudential Factors

1. Please describe the process by which the FDIC evaluated the financial soundness of the resulting institution.
2. Please describe the process by which the FDIC evaluated the management of the resulting institution.

Convenience and Needs Factor

The FDIC is required by the *Bank Merger Act* to note and consider each institution's performance under the Community Reinvestment Act (CRA). As stated in the Approval Order, while BB&T has an outstanding record of meeting community credit needs, SunTrust has a satisfactory record.

1. On the same day the merger was approved, the Federal Reserve issued a consent order against SunTrust as a result of misleading or inaccurate statements to business customers about the operation and billing of certain add-on products.¹⁹
 - a. Did the FDIC consider the compliance records of both entities with respect to consumer finance laws in their review of the merger? Did the FDIC consult with the CFPB or look at CFPB examination data to determine whether the banks had adequate records of compliance with consumer protection laws?

¹⁸ Federal Deposit Insurance Corporation, "Order and Basis for Corporation Approval," <https://www.fdic.gov/news/news/press/2019/pr19111a.pdf>

¹⁹ Board of Governors of the Federal Reserve System, "Federal Reserve Board announces approval of application by BB&T Corporation to merge with SunTrust Banks," November 19, 2019, <https://www.federalreserve.gov/newsevents/pressreleases/orders20191119a.htm>

- b. At what point in the merger review process did the FDIC become aware of the practices that led to the Federal Reserve consent order against SunTrust? How were they discovered?

Financial Stability Factor

1. The Approval Order states that “Though Truist Bank would be among the largest insured depository institutions in the United States, the proposed merger would effectuate such an increase in size by combining into one large institution products, services, and interconnections that do not generally present financial stability risks.”²⁰
 - a. Countrywide was a \$200 billion institution when it failed.²¹ Washington Mutual was \$307 billion.²² Together, they had the potential to do significant damage to the deposit insurance fund. Why does the FDIC believe that the failure of a \$450 billion institution would not present risks to the financial system?
 - b. Please describe the extent to which the FDIC considered the cost of failure of the merged institution in its review. How would Truist be wound down if it failed?
2. The Approval Order also listed five quantitative metrics considered when evaluating the financial stability factor, including size and the availability of substantive providers.²³ For each metric, please indicate if the FDIC has established numeric thresholds to evaluate whether or not it is triggered. If so, please identify the thresholds. If not, please describe how those factors were evaluated?

Transparency

While the FDIC Policy Statement does not contain an explicit transparency requirement, you have placed a significant emphasis on transparency during your year-and-a-half at the FDIC.

1. The depository data used for the anticompetitive analysis is non-confidential information. Please provide the full anticompetitive analysis it undertook when reviewing the merger?
2. During a speech at the 2019 Bank Policy Institute conference, you stated that BB&T and SunTrust made it “very difficult to decline their merger.”²⁴ Please clarify why you found it “very difficult” to decline the merger.

²⁰ Federal Deposit Insurance Corporation, “Order and Basis for Corporation Approval,”

<https://www.fdic.gov/news/news/press/2019/pr19111a.pdf>

²¹ New York Times, “Bank of American to buy Countrywide,” Gretchen Morgenson and Eric Dash, January 11, 2008, <https://www.nytimes.com/2008/01/11/business/worldbusiness/11iht-bofa.3.9157464.html>

²² Reuters, “WaMu is largest bank failure,” Elinor Comlay and Jonathan Stempel, <https://www.reuters.com/article/us-washingtonmutual-jpmorgannews1/wamu-is-largest-u-s-bank-failure-idUSTRE48P05I20080926>

²³ Federal Deposit Insurance Corporation, “Order and Basis for Corporation Approval,”

<https://www.fdic.gov/news/news/press/2019/pr19111a.pdf>

²⁴ Tweet by Victoria Guida, November 20, 2019, <https://twitter.com/vtg2/status/1197213714488811520>


3. On November 19, 2019 at 10:00 am, the FDIC held a Board meeting in which they considered a variety of matters in an open session.²⁵ Later that day, it was revealed that the FDIC Board approved the merger in a closed session, despite the fact that this action was creating the largest FDIC-supervised institution and is the largest bank merger since the 2008 financial crisis.
 - a. Why was the merger considered under a closed session?
 - b. Was any confidential information discussed during the closed session?
 - c. Who was in attendance during the closed session? Please include Board members and non-government officials, if applicable.
 - d. Please provide a transcript of the closed meeting.
4. American Banker published an interview with the top executives of BB&T and SunTrust in which Truist's chairman and CEO, Kelly King stated, "I was told by several senior regulators there was no legal reason to object to the deal."²⁶
 - a. Were you one of those senior level regulators?
 - b. Did any FDIC staff have conversations with the executives, or their representatives of either institution before the merger application was filed?
 - i. If so, please disclose the date, participants, and substance of the conversation.
 - ii. Did the FDIC provide any comment regarding the likelihood of the approval of the deal?

²⁵ Federal Deposit Insurance Corporation, "FDIC Board Matters," <https://www.fdic.gov/news/board/>

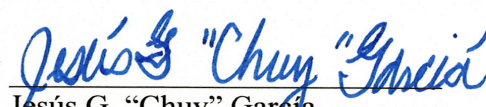
²⁶ American Banker, "Truist rising: With megamerger done, pressure to deliver," Paul Davis, December 09, 2019, <https://www.americanbanker.com/news/truist-rising-with-megamerger-done-pressure-on-to-deliver>

To better understand your agency's process for reviewing bank merger applications and how you applied that process to the BB&T-SunTrust deal we request a response to these questions by December 30, 2019.

Sincerely,



Elizabeth Warren
United States Senator



Jesús G. "Chuy" García
Member of Congress