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April 20, 2018

Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Dear Chairman Powell and Attorney General Sessions,

The Federal Reserve Board of Governors (the Board) and the Department of Justice Antitrust Division (the Division) share responsibility for reviewing the competitive effects of bank mergers and acquisitions under the Bank Holding Company Act, the Bank Merger Act, and the Home Owners Loan Act.[1] Industry observers anticipate a wave of new bank mergers if the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155) – which recently passed the Senate – becomes law. I write to inquire about how your agencies have reviewed past bank mergers and intend to use the tools Congress has provided to preserve competition and protect financial stability as they evaluate future mergers.

On March 14, 2018, the Senate passed S.2155, which would reduce federal oversight of banks with between $50 billion and $250 billion in assets. Industry observers expect that deregulating this category of banks will produce more mergers and consolidation. As the *American Banker* put it in an article entitled "SIFI hike could kick-start bank M&A," the "sweeping regulatory changes could nudge more big banks to consider acquisitions.[2]" A bulletin by the law firm Ballard Spahr, which represents many banks, noted the bill "may lead to increased merger

[1] Board of Governors of the Federal Reserve System, "Frequently Asked Questions," (online at: https://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm).
[2] Jackie Stewart, "SIFI hike could kick-start bank M&A," *American Banker* (November 14, 2017) (online at: https://www.americanbanker.com/news/sifi-hike-could-be-the-kick-start-bank-m-a-needs).

activity between and among regional and super regional banks.[3]" And "[i]nvestment bankers told *Reuters* that they expect deal talks to kick off once the Senate bill passes," with one investment banker saying "a regional bank CEO told him his institution was targeting three or four purchases within five years."[4]

Large regional banks compete with community banks for customers hoping to open checking accounts and small businesses looking for a loan to expand. I'm concerned about the negative impact of increased consolidation caused by S. 2155 on community banks and on customers who benefit from more competition for their business.

As you know, the Board, in consultation with other relevant banking regulators, reviews planned mergers and acquisitions involving bank holding companies to determine if the effect "in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint or trade.[5]" If it does, the Board will deny approval, unless the consolidation is in the public interest.[6] The Board is also supposed to consider other factors in its review, including the "needs of the community[7]" that will be affected by the merger and whether actions would result in "greater or more concentrated risks to the stability of the United States banking or financial system.[8]"

The Division concurrently reviews proposed mergers to determine if they have significant anti-competitive effects in two product markets – retail banking products and services and small business banking products and services.[9] The Division is supposed to engage in a somewhat more searching analysis of the competitive effects of the merger, using a more individualized definition for the relevant geography market.[10] The Division may negotiate with the merging parties if it has concerns about the competitive effects, but if those concerns aren't resolved, it can register its opposition with the Federal Reserve, and ultimately challenge the merger in court.[11]

Your agencies will likely be called on to review an increasing number of mergers if S. 2155 becomes law. To help me better understand your past practices and the evaluations you intend to

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[3] Ballard Spahr, "Senate Passes Banking Bill Providing Dodd-Frank Relief," (March 15, 2018) (online at: http://www.ballardspahr.com/alertspublications/legalalerts/2018-03-15-senate-passes-banking-bill-providing-dodd-frank-relief.aspx).
[4] David French & Michelle Price, "U.S. banks set for M&A wave as Trump cuts red tape," *Reuters* (Feb. 23, 2018) (online at: https://www.reuters.com/article/us-usa-m-a-banks-analysis/u-s-banks-set-for-ma-wave-as-trump-cuts-red-tape-idUSKCN1G71Z6).
[5] 12 U.S.C. s1842(c)(1).
[6] 12 U.S.C. s1842(c)(1).
[7] *Id.* at (c)(2)
[8] *Id.* at (c)(7).
[9] The U.S. Department of Justice, "Bank Merger Competitive Review – Introduction and Overview" (1995) (online at: https://www.justice.gov/atr/bank-merger-competitive-review-introduction-and-overview-1995).
[10] Board of Governors of the Federal Reserve System, "Frequently Asked Questions," (online at: https://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm).
[11] *Ibid*

undertake should additional mergers come before your agencies for review, I respectfully request that you answer the following questions by May 11, 2018.

1. How many merger applications were submitted to Board each year between 2006 and 2017?
    a. How many of these mergers were approved?
    b. How many times did the Board seek merger remedies, including divestment, before approving the merger? Please list the remedy sought in each case.
    c. How many mergers were denied?
    d. Of the cases that were denied, how many were denied over competition concerns? How many over concerns that they would hurt consumers or present a risk to the financial system?
    e. How many of these cases were delegated for review to regional Federal Reserve banks?
    f. Of the cases that were delegated, how many mergers were subsequently denied?
    g. In how many cases did the Board itself vote on the merger?

2. In how many cases between 2006 and 2017 did the Antitrust Division of the Department of Justice submit comments to the Board or regional Federal Reserve Banks as part of its review of merger?
    a. How many times did the Division recommend against approval of the merger?
    b. How many times did the Division seek merger remedies, including divestment, before recommending approval of the merger? Please list the remedy sought in each case.
    c. How many antitrust cases has the Division filed against banks?

3. Do you believe the Board and the Division's past approach to bank mergers was sufficient to protect the interests identified by Congress when evaluating bank mergers? If your answer is yes, please explain how the track record in this area is consistent with the interests identified by Congress. If your answer is no, please explain how you intend to change your approach.

Sincerely,

Elizabeth Warren
United States Senator