

February 7, 2019

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

Dear Chairman Powell,

I am writing again about my concerns about reviews by the Board of Governors of the Federal Reserve System's (the Board) of the competitive effects of bank mergers and acquisitions. This morning, SunTrust Banks, Inc. (SunTrust) and BB&T Corporation (BB&T) announced their agreement to merge, "subject to satisfaction of customary closing conditions" including the approval of the Board.¹ This merger – the largest since before the financial crisis² – would create the sixth-largest U.S. bank based on assets.³ The Board's record of summarily approving mergers raises doubts about whether it will serve as a meaningful check on this consolidation that creates a new too big to fail bank and has the potential to hurt consumers.

Information you provided at my request reveals that the Board approves virtually all merger and acquisition requests, risking significant negative impacts on consumer choice and competition. Combined with forthcoming changes that will weaken regulatory protections, the Board's anemic scrutiny of applications for mergers and acquisitions raises concerns that the Board, under your leadership, may oversee a wave of bank consolidation—to the detriment of consumers and the financial system.

My Concerns about Legislative Changes that Could Result in More Bank Mergers

I appreciated your detailed response to my previous letter on the topic. Since I received your response, a series of federal policy changes with the potential to affect mergers and acquisitions (M&A) activity in the banking industry have been announced or gone into effect. I am requesting

¹ Street Insider "SunTrust Banks (STI), BB&T Corporation (BBT) Announce \$66 Billion Merger," February 7, 2019,

<https://www.streetinsider.com/Corporate+News/SunTrust+Banks+%28STI%29+Announces+Merger+Agreement+with+BB%26T+Corporation+%28BBT%29/15091122.html>.

² Reuters "Merger between BB&T and SunTrust creates sixth-largest bank in the U.S.," February 7, 2019, <https://www.nbcnews.com/business/business-news/merger-between-bb-t-suntrust-creates-sixth-largest-bank-u-n968706>.

³ WSB-TV 2 "Atlanta's SunTrust Bank to merge with BB&T, shift HQ to Charlotte," February 7, 2019, https://www.wsbtv.com/news/local/atlanta-based-suntrust-bank-and-bb-t-to-merge-in-66-billion-deal/916033270?utm_source=homestream&utm_medium=site_navigation&utm_campaign=homestream_click.

additional information to help me understand the impact of these policy changes on the Board's review and approval process.

I initially wrote to you on this matter shortly after the Senate passed the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155), which reduced federal oversight of banks with between \$50 billion and \$250 billion in assets.⁴ Industry analysts predicted that S. 2155 would result in an increase in merger and acquisition activity among banks.⁵ I was particularly concerned that increased M&A activity could harm local and community banks and the consumers that rely on them.⁶

The Board, in conjunction with the Department of Justice Antitrust Division, is responsible 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.⁷ If the Board believes a proposed merger would create a monopoly, poorly serve the "needs of the community," or otherwise pose risks to the financial system, it can block the transaction.⁸ In my letter, I requested data on the total number of M&A applications that the Board had approved from 2006-2017.⁹

Problems with the Board's Review of Mergers and Acquisitions

In May 2018, you provided detailed responses to my questions. According to the information you provided:

- The Federal Reserve System approved 3,316 of 3,819 merger applications (or 86.8%) between 2006 and 2017. During the same time period, it did not deny a single application, and it only required 0.5% of approved applicants to divest branches as a condition for approval¹⁰

⁴ Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155.

⁵ See Ballard Spahr, "Senate Passes Banking Bill Providing Dodd-Frank Relief," March 15, 2018, <https://www.ballardspahr.com/alertspublications/legalalerts/2018-03-15-senate-passes-banking-bill-providing-dodd-frank-relief.aspx>; Reuters, "U.S. banks set for M&A wave as Trump cuts red tape," David French and Michelle Price, February 23, 2018, <https://www.reuters.com/article/us-usa-m-a-banks-analysis/u-s-banks-set-for-ma-wave-as-trump-cuts-red-tape-idUSKCN1G71Z6>; American Banker, "SIFI hike could kick-start bank M&A," Jackie Stewart, November 14, 2017, <https://www.americanbanker.com/news/sifi-hike-could-be-the-kick-start-bank-m-a-needs>.

⁶ Letter from Senator Elizabeth Warren to Chairman of the Board of Governors of the Federal Reserve System, Jerome H. Powell, and Attorney General Jeff Sessions, April 19, 2018, <https://www.warren.senate.gov/newsroom/press-releases/warren-requests-information-from-fed-doj-on-bank-merger-reviews>.

⁷ Board of Governors of the Federal Reserve System, "FAQs: How do the Federal Reserve and the U.S. Department of Justice, Antitrust Division, analyze the competitive effects of mergers and acquisitions under the Bank Holding Company Act, the Bank Merger Act and the Home Owners Loan Act?," <https://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm>.

⁸ 12 U.S.C. s1842(c)(1); 12 U.S.C. s1842(c)(2); and 12 U.S.C. s1842(c)(7).

⁹ Letter from Chairman of the Board of Governors of the Federal Reserve System, Jerome H. Powell, and Attorney General Jeff Sessions, April 19, 2018, <https://www.warren.senate.gov/newsroom/press-releases/warren-requests-information-from-fed-doj-on-bank-merger-reviews>.

¹⁰ Letter from Chairman of the Board of Governors of the Federal Reserve System, Jerome H. Powell to Senator Elizabeth Warren, May 10, 2018.

- From 2014-2017, the Federal Reserve System approved over 89% of merger applications each year, with approval rates rising as high as 94.1% in 2017 (the highest approval rating recorded from 2006-2017).¹¹ Meanwhile, according to recent data, the Federal Reserve System approved 94.4% of mergers in the first half of 2018.¹²
- Mergers and acquisitions decisions are frequently made without public notice or input. The information your provided notes that prospective applicants can speak with Federal Reserve System staff in advance of publicly filing a merger and acquisitions application to determine whether their proposed transaction would likely be approved or denied and withdraw or make changes to their applications based on these private discussions with regulators. Between 2006 and 2017, 503 applications (13.2%) were withdrawn.

Though your response asserted that “the Board’s approach to bank mergers has been sufficient to protect against the tendency to create monopolies and the substantial lessening of competition,” I am concerned by the Federal Reserve System’s high rates of M&A application approvals described in your response—particularly those in recent years. In addition, the Board’s practice of permitting consultations between Federal Reserve System staff and M&A applicants raises a series of questions about transparency and fairness. My concerns are heightened by recent policy developments that have the potential to impact the Board’s review of bank mergers.

2019 Could Be “The Year of the Big Bank Merger”—and Regulatory Changes could Make Matters Even Worse

Since we last communicated about the Board’s approval of bank mergers and acquisitions, S. 2155 was signed into law (Public Law 115-174),¹³ spurring predictions that 2019 “could be the year of the big bank merger.”¹⁴ One industry analyst told *Yahoo Finance* that he “has had conversations with banks between \$50 billion and \$200 billion on preparing for future mergers” in the wake of Public Law 115-174’s passage and knows of “regional banks that are actively preparing to be able to execute” on mergers and acquisitions.¹⁵ Other analysts, meanwhile, have stated that they “expect...greater interest and willingness among banking organizations to pursue mergers and acquisitions” in the coming year.¹⁶

The predictions appear to be correct. Both Suntrust and BB&T have between \$50 and \$250 billion in assets and the Board has moved even more quickly than the law required to loosen

¹¹ Ibid.

¹² Board of Governors of the Federal Reserve System, “Semiannual Report on Banking Applications Activity: January 1-June 30, 2018,” September 2018, p. 3, <https://www.federalreserve.gov/publications/files/semiannual-report-on-banking-applications-20180928.pdf>.

¹³ Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law No. 115-174.

¹⁴ Yahoo Finance, “Why 2019 could be the year of the big bank merger,” Brian Cheung, December 14, 2018, <https://finance.yahoo.com/news/why-2019-could-big-bank-145105506.html>.

¹⁵ Yahoo Finance, “Why 2019 could be the year of the big bank merger,” Brian Cheung, December 14, 2018, <https://finance.yahoo.com/news/why-2019-could-big-bank-145105506.html>.

¹⁶ Skadden, Arps, Slate, Meagher & Flomm LLP, “Regulatory Relief May Generate Increased M&A Activity Among Banks,” Brian D. Christiansen, David C. Engles, Sven G. Mickisch, January 17, 2019, <https://www.skadden.com/insights/publications/2019/01/2019-insights/regulatory-relief-may-generate-increased-ma>.

regulatory protections on these banks.¹⁷ Data you provided my office indicate that the Board would likely approve almost all of the wave of M&A applications catalyzed by the passage of Public Law 115-174. This would result in the precise outcome I raised concerns about last year: more mergers that result in reduced competition and choice for consumers and small businesses.

In addition, the Office of the Comptroller of the Currency (OCC) has taken steps to alter supervision and enforcement under the Community Reinvestment Act (CRA), which requires financial institutions to “help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods.”¹⁸ The CRA and its implementing regulations “require Federal financial institution regulators to assess the record of each bank in fulfilling its obligation to the community and to consider that record in evaluating and approving applications for charters, bank mergers, acquisitions, and branch openings.”¹⁹ In August 2018, the OCC released an Advance Notice of Proposed Rulemaking (ANPR) seeking input on its efforts to amend the CRA implementing regulations.²⁰ The Board did not join this ANPR, but an analysis found that the “questions and comments made by the OCC in the ANPR,” are stacking the deck, “making CRA exams easier for banks to pass.”²¹ Your response to me noted that “Community Reinvestment Act or consumer compliance record[s], including fair lending,” were critical to the Board’s evaluation of a bank’s M&A application.²² A loosening of CRA standards would also ease restriction on mergers and reduce the Board’s ability to adequately assess their impact on local communities.

Questions

To help me better understand the impact of the passage of Public Law 115-174 and the potential impact of weakening CRA requirements on the Board’s merger approval process, I respectfully request that you answer the following questions by February 21, 2019:

1. Since the passage of Public Law 115-174, has the volume of merger applications submitted to the Board increased, decreased, or stayed constant?

¹⁷ Board of Governors of the Federal Reserve System, “Implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act: Vice Chairman for Supervision Randal K. Quarles, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, D.C.” October 2, 2018, <https://www.federalreserve.gov/newsevents/testimony/quarles20181002a.htm>.

¹⁸ Board of Governors of the Federal Reserve System, “Community Reinvestment Act (CRA),” https://www.federalreserve.gov/consumerscommunities/cra_about.htm.

¹⁹ The Office of the Comptroller of the Currency, “Community Reinvestment Act,” <https://www.occ.gov/topics/community-affairs/publications/fact-sheets/pub-fact-sheet-cra-reinvestment-act-mar-2014.pdf>.

²⁰ U.S. Department of the Treasury, Office of the Comptroller of the Currency, “OCC Seeks Comments on Modernizing Community Reinvestment Act Regulations,” August 28, 2018, <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-87.html>.

²¹ National Community Reinvestment Coalition, “NCRC analysis of the advanced notice of proposed rulemaking (ANPR),” Josh Silver, September 6, 2018, https://ncrc.org/ncrc-analysis-of-the-advanced-notice-of-proposed-rulemaking-anpr/#_ednref3.

²² Letter from Chairman of the Board of Governors of the Federal Reserve System, Jerome H. Powell, to Senator Elizabeth Warren, May 10, 2018.

- a. Please provide information on the number of merger applications submitted to the board between May 24, 2018, and December 31, 2018. How does this number compare with merger applications submitted during the same time period for each year from 2006-2017?
 - b. Does the Board anticipate the number of merger applications submitted to the Board to increase in 2019, decrease in 2019, or stay constant? Please describe the factors considered by the board in its assessment.
2. Your May 2018 letter highlighted the importance of CRA compliance in the Board's approval process, and noted that banks with unsatisfactory CRA records are often discouraged from applying, or encouraged to withdraw from consideration for, merger approval.
 - a. For each year from 2006-2018, how many merger applications were withdrawn as a result of an applicants' less-than-satisfactory CRA compliance?
 - b. For each year from 2006-2018, how many merger applications were withdrawn as a result of an applicants' less-than-satisfactory consumer compliance or fair lending record?
 - c. How does the Board communicate and work with other financial regulators, including the OCC, to coordinate financial regulators' approach towards CRA enforcement?
3. Of 3,819 applications submitted to the Board for approval from 2006-2017, 503 were withdrawn from consideration. In your May 2018 letter, you noted that "proposals are withdrawn at the initiative of the applicant" and "sometimes occur after Federal Reserve System staff has informed the applicant that a significant issue exists that likely would preclude an approval recommendation by staff."²³
 - a. How many of the 503 applications were withdrawn as a result of Federal Reserve staff informing the application that "a significant issue exists that likely would preclude an approval recommendation by staff"? Please provide a list of all such applications and the issue(s) of concern raised by staff
 - b. How many of the 503 withdrawn applications were discussed with Federal Reserve staff and withdrawn before the public had an opportunity to file comments?
4. Federal Reserve System staff may solicit "additional information and documents" from applicants, should they determine a "proposed transaction warrants further review." Staff

²³ Letter from Chairman of the Board of Governors of the Federal Reserve System, Jerome H. Powell, to Senator Elizabeth Warren, May 10, 2018.

often solicit information such as “branch-level information”, “information concerning the lending operations of banks”, “documents relating to competition”; and “documents concerning the transaction.”²⁴

- a. How often does Federal Reserve System staff request additional information from applicants?
 - b. Does Federal Reserve System staff keep records of its additional information requests? If possible, please provide information on the number of merger applications from 2006-2018 for which Federal Reserve System staff requested additional information from an applicant to determine whether significant issues existed. In these cases, did the public have the opportunity to review and comment on the applications prior to the additional information requests?
5. Members of the public are permitted to file adverse public comments on M&A applications, which the Federal Reserve must publish and evaluate.
- a. For each year from 2006-2018, how many M&A applications received an adverse public comment?
 - b. How does the Board evaluate adverse public comments?
 - c. Upon receiving an adverse public comment, does the Board often request additional information from applicants? If records are available, please provide the total number of applications that received an adverse public comment for each year from 2006-2018 for which the Board also requested additional information from applicants.
 - d. Has the Board ever suggested that an application be withdrawn as a result of an adverse public comment? If so, please provide the total number of applications for each year from 2006-2018 that were withdrawn as a result of an adverse public comment.
6. In your May 2018 letter, you explained that “prospective applicants may discuss a proposed transaction with Federal Reserve System staff prior to filing an Application, and applicants will be discouraged from filing Applications where it is apparent that the Applications would not meet all of the statutory factors required for approval.” These prospective conversations reduce the number of non-approvable applications submitted to the Board.

²⁴ Board of Governors of the Federal Reserve System, “FAQs: How do the Federal Reserve and the U.S. Department of Justice, Antitrust Division, analyze the competitive effects of mergers and acquisitions under the Bank Holding Company Act, the Bank Merger Act and the Home Owners Loan Act?”, <https://www.federalreserve.gov/bankinfo/reg/competitive-effects-mergers-acquisitions-faqs.htm>.

- a. In 2012, the Board released information about “a new process for an applicant to request feedback on a potential acquisition or other proposal prior to the submission of a formal application or notice,” known as “pre-filing.”²⁵ Since the passage of Public Law 115-174, has Board experienced an increase in the number of applicants using the pre-filing process? Please provide information on the number of applicants that contacted Federal Reserve Staff via the pre-file process between May 24, 2018, and December 31, 2018. How does this number compare with the use of the pre-file process during the same time period for each year from 2012-2017?
- b. Does the Board permit Federal Reserve System staff to have informal conversations, outside of the pre-filing process, with applicants to discuss potential mergers and acquisitions activity? If so:
 - i. Does the Federal Reserve System staff keep records about the content and frequency of these informal conversations? If possible, please provide information on the total number of informal conversations that occurred each year from 2006-2018.
 - ii. How do informal conversations impact how an application, once submitted, is assessed by staff?
 - iii. How are key components of the Board’s review—such as a merger’s impact on the “needs of the community”—assessed during these informal conversations?
 - iv. Is there a public input process during these informal conversations?

Please do not hesitate to reach out to Julie Siegel or Susannah Savage of my staff at 202-224-4543 with any questions or concerns.

Sincerely,



Elizabeth Warren
United States Senator

²⁵ Board of Governors of the Federal Reserve System, “SR 12-12/CA 12-11: Implementation of a New Process for Requesting Guidance from the Federal Reserve Regarding Bank and Nonbank Acquisitions and Other Proposals,” July 11, 2012, <https://www.federalreserve.gov/supervisionreg/srletters/sr1212.htm>