

Congress of the United States

Washington, DC 20510

December 13, 2019

The Honorable Randal K. Quarles
Vice Chairman for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551

Dear Vice Chair Quarles:

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>

Competitive Effects

1. The Fed evaluated how the transaction would affect competition in 81 geographic markets.¹⁴ These geographic markets are the areas used to measure the concentration of the relevant banking products. Were the definitions of any predefined markets altered from the time the merger application was filed to the time of the merger approval?
2. The Approval Order mentions that the “Board has considered the relative shares of total deposits in insured depository institutions that BB&T would control.”¹⁵ Did the Fed conduct a competitive analysis of any other product markets, such as small business lending or home mortgage lending? If not, why not?
3. According to the Approval Order, in 13 of the geographic markets, the Herfindahl-Hirschman Index (HHI) levels for deposits would exceed one or both of the 1800/200 thresholds, meaning that the expected change in market concentration is significant.¹⁶
 - 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 Fed obtained the deposit levels for credit union branches. If estimates were used, please describe the methodology.
 - b. For the seven 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.

Financial, Managerial, and Other Supervisory Conditions

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

¹⁴ Federal Reserve System, “Order Approving the Merger of Bank Holding Companies,” <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

¹⁵ Id.

¹⁶ Id.

3. 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.¹⁷
 - a. Are any executives who were in the chain of command responsible for these violations in a leadership position of the new Truist Bank?
 - b. In the last five years, SunTrust was the subject of multiple enforcement actions, including by the Fed, the Securities and Exchange Commission, the CFPB, the DOJ and multiple state attorneys general.¹⁸ Are any executives who were in the chain of command responsible these violations in leadership positions of the new Truist Bank?
 - c. In the last five years, BB&T has been the subject of five enforcement actions by the Securities and Exchange Commission.¹⁹ Are any executives who were in the chain of command responsible these violations in leadership positions of the new Truist Bank?

Convenience and Needs Consideration

1. The Fed is required by the *Bank Holding Company Act* to note and consider each institution's performance under the Community Reinvestment Act (CRA).²⁰ As stated in the Approval Order, while BB&T has an outstanding record of meeting community credit needs, SunTrust only has a satisfactory record. "With respect to SunTrust Bank, [CRA] examiners noted that some branch closures and consolidations by SunTrust Bank may have adversely affected the accessibility of banking services in some of the bank's [Assessment Areas]."²¹ This effect on accessibility included eight branch closures in low-income tracts and 21 closures in moderate-income tracts.

¹⁷ 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>

¹⁸ Good Jobs First, https://violationtracker.goodjobsfirst.org/prog.php?parent=&major_industry_sum=&primary_offense_sum=&agency_sum=&agency_sum_st=&hq_id_sum=&company_op=starts&company=Suntrust&major_industry%5B%5D=&case_category=&all_offense%5B%5D=&penalty_op=%3E&penalty=&govt_level=&agency_code%5B%5D=&agency_code_st%5B%5D=&pen_year%5B%5D=&pres_term=&free_text=&case_type=&ownership%5B%5D=&hq_id=&naics%5B%5D=&state=&city=&order=pen_year&sort=desc

¹⁹ ¹⁹ Good Jobs First, https://violationtracker.goodjobsfirst.org/prog.php?parent=&major_industry_sum=&primary_offense_sum=&agency_sum=&agency_sum_st=&hq_id_sum=&company_op=starts&company=BB%26T&major_industry%5B%5D=&case_category=&all_offense%5B%5D=&penalty_op=%3E&penalty=&govt_level=&agency_code%5B%5D=&agency_code_st%5B%5D=&pen_year%5B%5D=&pres_term=&free_text=&case_type=&ownership%5B%5D=&hq_id=&naics%5B%5D=&state=&city=&order=pen_year&sort=desc

²⁰ 12 U.S.C. 1842.

²¹ Federal Reserve System, "Order Approving the Merger of Bank Holding Companies," <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

- i. Does the Fed find it appropriate to reward an institution for failing to meet the credit needs of the communities it serves?
 - ii. How will the Fed ensure that Truist does not engage in similar practices in the future?
 - iii. During the merger review process, BB&T and Suntrust agreed to a “three-year, \$60 billion community benefits plan,” that will “increase financial resources for low- and moderate-income (LMI) communities across the eastern United States.”²² How will the Fed ensure that Truist complies with this agreement?
 - iv. Of all the merger applications that have been withdrawn, how many were withdrawn because of a bank’s CRA performance record?
- 2. The Approval Order States that “several commenters alleged that BB&T and SunTrust were not meeting the credit needs of minority and LMI communities and borrowers, particularly in Florida and Durham, North Carolina, or unbanked and underbanked populations. One commenter alleged that BB&T made a disproportionately low number of home purchase loans to African American and Latino borrowers in the Houston, Texas, New York, New York, and Charleston, West Virginia, areas based on data reported for 2017 under HMDA.”²³

Following this statement, the Approval Order explains how BB&T denies the commenters’ allegations. It later states that “The Board is concerned when HMDA data reflect disparities in the rates of loan applications, originations, and denials among members of different racial or ethnic groups in local areas. These types of disparities may indicate weaknesses in the adequacy of policies and programs at an institution for meeting its obligations to extend credit fairly. However, other information critical to an institution’s credit decisions is not available from HMDA data.”²⁴

- a. Did the Fed rely on BB&T’s denials to determine that these allegations of lending discrimination not take place?
- b. Does HMDA data indicate that these disparities do exist?
 - i. If so, what information was used to reach the conclusion that these concerns did not warrant further scrutiny and denial of the merger?

²² National Community Reinvestment Coalition, “BB&T, SunTrust And NCRC Announce \$60 Billion Community Investment Commitment For New Truist Bank,” <https://ncrc.org/bbt-suntrust-and-ncrc-announce-60-billion-community-investment-commitment-for-new-truist-bank/>

²³ Federal Reserve System, “Order Approving the Merger of Bank Holding Companies,” <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

²⁴ Id.

- c. What additional information that is “critical to an institution’s credit decision” would the Fed have needed to make a decision about whether BB&T was “meeting its obligations to extend credit fairly”?
3. 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.²⁵
 - a. When did the Fed first become aware of the activities SunTrust was engaging in that led to the consent order being issued?
 - b. When was it decided that it would be appropriate to publicly release the consent order at the same exact time as the announcement of the Fed approval of the merger? Who made that decision?
4. In assessing the convenience and needs factor, the Fed considered the supervisory views of the CFPB.²⁶
 - a. What were those views?
 - b. Did the Fed review the Bureau’s Consumer Complaint database in evaluating the merger?
 - c. A recent study has shown that SunTrust and BB&T ranked third and 12th in the most consumer complaints that year.²⁷ Does the Fed find those statistics concerning?

Financial Stability Factor

1. The Approval Order states that “In light of all the facts and circumstances, this transaction would not appear to result in meaningfully greater or more concentrated risks to the stability of the U.S. banking or financial system.”²⁸

²⁵ United States of America Before the Board of Governors of the Federal Reserve System, “Consent Order,” <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a2.pdf>

²⁶ Federal Reserve System, “Order Approving the Merger of Bank Holding Companies,” <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

²⁷ American Banker, “BankThink: CFPB should have a say in bank mergers,” Jeremy Kress, September 03, 2019, <https://www.americanbanker.com/opinion/cfpb-should-have-a-say-in-bank-mergers>

²⁸ Federal Reserve System, “Order Approving the Merger of Bank Holding Companies,” <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

- a. Countrywide was a \$200 billion institution when it failed.²⁹ Washington Mutual was \$307 billion.³⁰ Together, they had the potential to do significant damage to the deposit insurance fund. Why does the Fed believe that the failure of a \$450 billion institution would not present risks to the financial system?
 - b. In a July 2018 speech advocating for deregulation of regional banks, you favorably cited Fed research showing that the failure of a single \$250 billion bank would be far worse for the economy than the failure of five \$50 billion banks failed separately.³¹ And yet you concluded last month that the \$450 billion BB&T—SunTrust merger would not materially increase risks to financial stability. Was this research considered in the context of the BB&T-SunTrust merger?
 - c. Please describe the extent to which the Fed considered the cost of failure of the merged institution in its review.
2. The Approval Order also listed various metrics considered when evaluating the financial stability factor, including size and the availability of substitute providers. For each metric, please indicate if the Fed 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

This bank merger is the largest to occur since the financial crisis and consumers deserve to have a complete understanding of the decision-making process that led to its approval.

1. The depository data used for the anticompetitive analysis is non-confidential information. As such, when will the Fed be publishing the full anticompetitive analysis it undertook when reviewing the merger?
2. 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."³²
 - a. Were you one of those senior level regulators?

²⁹ 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>

³⁰ 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>


³¹ "Remarks by Randal K. Quarles, Vice Chairman for Supervision, Board of Governors of the Federal Reserve System at American Bankers Association Summer Leadership Meeting," July 18, 2018

³² 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>


- b. Did any Fed 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 Fed provide any comment regarding the likelihood of the approval of the deal, including whether the Fed anticipated there being any legal barriers to approval?

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 27, 2019.

Sincerely,



Elizabeth Warren
United States Senator



Jesús G. "Chuy" García
Member of Congress