



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

JEROME H. POWELL
CHAIRMAN

May 10, 2018

The Honorable Elizabeth Warren
United States Senate
Washington, D.C. 20510

Dear Senator:

Thank you for your letter dated April 20, 2018, regarding how the Board of Governors of the Federal Reserve System (Board) has reviewed the competitive effects of bank mergers and acquisitions under the Bank Holding Company Act of 1956 (BHC Act), section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act), and the Home Owners' Loan Act (HOLA). Your letter inquires about how the Board and the Department of Justice Antitrust Division (Division) have reviewed past transactions and intend to use the tools Congress has authorized to preserve competition and protect financial stability as the agencies evaluate future mergers.

To help better understand the Board's and the Division's past practices and evaluations and how those practices will apply to future proposals that will come before the agencies for review, you asked three questions. We understand questions 1 and 3 to be applicable to the Board. (Question 2 appears to be addressed solely to the Division.) Your questions and our responses are set forth below.

1. *How many merger applications were submitted to the Board each year between 2006 and 2017?*

The Federal Reserve System received a total of 3,819 applications for the proposed merger with and/or acquisition of an insured depository institution under the BHC Act, the Bank Merger Act, or HOLA (Applications). This number includes Applications filed pursuant to the BHC Act and the Bank Merger Act between January 1, 2006, and December 31, 2017, and Applications filed pursuant to HOLA between July 21, 2011, (the date responsibility for supervision and regulation of savings and loan holding companies was transferred from the former Office of Thrift Supervision to the Board pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)) and December 31, 2017.

- a. *How many of these mergers were approved?*

Of the total 3,819 Applications, 3,316 were approved by the Federal Reserve System between January 1, 2006, and December 31, 2017. During the same timeframe, 503 Applications were withdrawn by the applicant prior to action by the Federal Reserve System on the Application. Attached as an Appendix is a chart that provides a detailed breakdown of the number of Applications received, approved, and withdrawn for each calendar year beginning January 1, 2006, and ending December 31, 2017. For approved Applications, the chart indicates the number of proposals per year that were approved directly by the Board or by the Federal Reserve Banks (Reserve Banks) or the Secretary of the Board (Secretary), acting under authority delegated by the Board.¹

Beginning with the second half of 2014, the Board began publishing a Semiannual Report on Banking Applications Activity (Semiannual Report),² which contains aggregate data and other information regarding banking applications, including the Applications referenced in this letter. The Semiannual Report provides statistics on the number of approvals, denials, and withdrawals and also describes the principal reasons for which applications are withdrawn. Proposals are withdrawn at the initiative of the applicant. These withdrawals 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 based on staff's review of the statutory standards for approval. For example, the applicant or resulting banking organization's financial or managerial condition may be less than satisfactory; the Community Reinvestment Act (CRA) or consumer compliance record, including fair lending, may be less than satisfactory, or there may be other significant consumer compliance issues; or competitive or financial stability considerations may not be consistent with approval. In general, the Federal Reserve System expects institutions rated less-than-satisfactory or operating under a formal enforcement action to address the issues that led to the less-than-satisfactory rating or the

¹ In general, the Reserve Banks have delegated authority to act on merger proposals that are not subject to an adverse public comment, do not raise material financial, managerial, competitive, or financial stability concerns, or do not present significant policy or legal questions on which the Board does not have an established position. The Secretary is authorized to act on merger proposals where the responsible Reserve Bank is precluded from acting under delegated authority because of the existence of an interlock between the Reserve Bank's board of directors and the applicant. Actions by the Secretary are subject to the same limitations as actions by the Reserve Banks.

² The Semiannual Reports on Banking Applications Activity are available on the Board's website at <https://www.federalreserve.gov/publications/semiannual-report-on-banking-applications-activity.htm>.

enforcement action prior to seeking approval to engage in expansionary activities, including proposals to merge with and/or acquire another organization.

- b. *How many times did the Board seek merger remedies, including divestment, before approving the merger? Please list the remedy for each case.*

Out of the 3,316 Applications approved by the Federal Reserve System between January 1, 2006, and December 31, 2017, the Board sought divestiture of branches as a merger remedy in approximately 16 Applications where there were competitive concerns. The Board has sought no merger remedies other than branch divestitures to address competitive issues.

- c. *How many mergers were denied?*

In reviewing every Application, the Federal Reserve System considers the required statutory factors, including the financial and managerial resources of the organizations involved and of the proposed combined organization, and the convenience and needs of the communities to be served, including the record of performance under the CRA and consumer compliance and fair lending records, as well as the effects of a proposal on competition and on financial stability. Proposals not meeting each of these factors generally would not be approvable. 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. In addition, if an Application has been filed and staff does not believe the proposed Application meets all of the required factors for approval, the applicant typically is provided an opportunity to withdraw the Application before the Board acts on the Application. The Board did not formally deny any Applications between January 1, 2006, and December 31, 2017.

- 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?*

As noted above, many applications were withdrawn after staff informed applicants that significant issues existed that would preclude an approval recommendation by staff based on staff's review of the statutory standards for approval.

With respect to competitive concerns, in several instances the concerns in particular local banking markets were addressed, and a denial recommendation was averted, through divestitures of specific branch offices of the target firm.

In several other instances, Applications that would have raised competition concerns were avoided after those concerns were explained to the potential acquirers. In these cases, either no Application was filed, or an Application was withdrawn.

In some cases presenting consumer concerns, the Board has conditioned approval of Applications on the applicants' commitments to the Board to act as successors to and to abide by outstanding enforcement actions involving the target organizations, including the payment of civil money penalties and/or restitution to affected consumers.

The Board has not denied or conditioned any merger and acquisition proposals on financial stability grounds.

- e. How many of these cases were delegated for review to regional Federal Reserve banks?*

Of the 3,316 Applications the Federal Reserve System approved between January 1, 2006, and December 31, 2017, the Reserve Banks approved 2,940 Applications, and the Secretary of the Board approved 154 Applications, under delegated authority. No Applications presenting material competitive or financial stability concerns were delegated to the Reserve Banks for approval. As noted, the Reserve Banks have delegated authority to approve applications that meet specific criteria and do not raise any significant policy or legal issues. These criteria are communicated to the public and are designed so that Applications that meet the criteria for delegation are presumed not to raise material competitive or financial stability concerns.³

- f. Of the cases that were delegated, how many mergers were subsequently denied?*

No Applications were denied under delegated authority. The Board's Rules of Delegation authorize the Reserve Banks to approve Applications that meet specific criteria and do not raise any significant policy or legal issues. Only the Board can deny an Application

³ The Board and the Department of Justice jointly developed a set of Frequently Asked Questions to inform the public about the agencies' standards for competitive review. These FAQs are available on the Board's website at <https://www.federalreserve.gov/bankinforeg/competitive-effects-mergers-acquisitions-faqs.htm>. The Board's current delegation criteria for financial stability are described in Peoples's United Financial, Inc., FRB Order No. 2018-09 (April 2, 2018).

g. In how many cases did the Board itself vote on the merger?

Of the 3,316 Applications that were approved by the Federal Reserve System between January 1, 2006, and December 31, 2017, the Board directly approved 222 Applications.

2. *In how many cases between 2006 and 2017 did the Division 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?*

The answers to question 2 will be provided separately by the Division.

3. *Do you believe the Board's 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.*

In reviewing mergers and acquisitions proposals, Congress has directed the Board to consider, among other factors, whether the proposal would tend to create a monopoly or would substantially lessen competition in any section of the country. We believe 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.

For most Applications, the Board analyzes the competitive effects of proposed mergers and/or acquisitions in the context of local geographic banking markets. Evidence from the Survey of Consumer Finances and other sources continues to suggest that the market for retail banking products – both for households and for small businesses – is geographically local. This is despite continued growth in the use of the Internet for banking. The economic evidence to date suggests that Internet banking appears to be more of a complement to local brick-and-mortar bank branches than a substitute for those branches.

While the banking industry has become more concentrated at a national level in recent decades, concentration in local banking markets has remained fairly constant. For commercial banks, the average Herfindahl-Hirschman index (HHI) in Metropolitan Statistical Areas from January 1, 2006, through December 31, 2017, remained flat, going

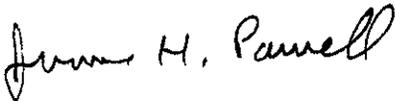
The Honorable Elizabeth Warren
Page Six

from 1785 in 2006 to 1786 in 2017. For rural counties, the average HHI dropped from 4417 in 1980 to 3847 in 2006, before rising to 3911 in 2017. A weighted average of the HHI across all counties, in which county bank deposits are used as the weights, gives similar results. The HHI went from 1539 in 2000 (the first year available) to 1402 in 2006 and 1449 in 2016. Markets with HHI below 1800 are generally not considered to be "highly concentrated" by either the Board or the Division.

These data suggest that the Board's transparent and consistent antitrust policy in recent decades has dissuaded the filing of Applications that would have led to an increase in local market concentration or has addressed potentially problematic merger applications through divestitures of branch offices.

Thank you for your interest in this important issue. I hope this information is helpful to you.

Sincerely,

A handwritten signature in cursive script that reads "James H. Parnell". The signature is written in dark ink and is centered below the word "Sincerely,".

cc: The Honorable Jeff Sessions

Appendix
Merger and Acquisition Applications by Year

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Approved	463	466	320	222	223	194	226	190	248	279	245	240
<i>by Board Vote</i>	33	23	26	8	10	16	10	10	16	30	13	27
<i>by Delegation to Federal Reserve Bank</i>	403	414	282	205	202	165	202	175	223	237	223	209
<i>by Delegation to Board's Office of the Secretary</i>	27	29	12	9	11	13	14	5	9	12	9	4
Withdrawn⁴	44	36	62	66	80	43	43	40	25	21	28	15
Total	507	502	382	288	303	237	269	230	273	300	273	255

⁴ The reason for the greater number of withdrawn Applications in the years surrounding the financial crisis was due to numerous emergency filings for targets that were FDIC failing banks. The Applications subsequently were withdrawn because applicant was not the winning bidder.