Questions for the Record- Senator Warren
Oversight of Financial Regulators
December 12, 2019

For The Honorable Jelena McWilliams

BB&T-SunTrust Merger

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.[1] 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. [2]

Competitive Factors

1. The FDIC evaluated how the transaction would affect competition in 81 geographic markets.[3] 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). 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.

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[1] Federal Deposit Insurance Corporation, "FDIC Law, Regulations, Related Acts," https://www.fdic.gov/regulations/laws/rules/5000-1200.html#fdic5000fdicso2
[2] Federal Deposit Insurance Corporation, "Order and Basis for Corporation Approval," https://www.fdic.gov/news/news/press/2019/pr19111a.pdf
[3] Id.

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

    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.

<u>Prudential Factors</u>

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.

<u>Convenience and Needs Factor</u>

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.

    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?

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."

    a. Countrywide was a $200 billion institution when it failed.[4] Washington Mutual was $307 billion. [5] 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 interconnectedness and complexity. 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."[6] Please clarify why you found it "very difficult" to decline the merger.

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. Later that day, it was revealed that the FDIC Board approved the merger in a closed session, despite the fact that this action was

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[4] 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
[5] 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
[6] Tweet by Victoria Guida, November 20, 2019, https://twitter.com/vtg2/status/1197213714488811520

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."[7]

   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?

<u>Valid-When-Made-Doctrine</u>

1. Under current law, is a payday lender able to issue a loan with a 160 percent APR and sell that loan to a bank to avoid certain state interest rate caps?

2. Under the proposed rule, would a payday lender be able to issue a loan with a 160 percent APR and sell that loan to a bank to avoid certain state interest rate caps?

3. The proposal states that the FDIC would unfavorably view the practice of a nonbank lender using banks for the purpose of avoiding state interest rate caps. Please describe what concrete protections the proposed rule contains to ensure that this practice does not occur.

   a. Would the FDIC pursue enforcement actions against banks that assist nonbank lenders in avoiding state interest rate caps?

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[7] 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

4. The proposed rule does not contain a single quantitative estimate to estimate the impact of the change on consumers. The rule explicitly claims that "in jurisdictions affected by *Madden,* to the extent the proposed rule results in the preemption of State usury laws, some consumers may benefit from the improved availability of credit from State Banks. For these consumers, this additional credit may be offered at a higher interest rate than otherwise provided by relevant state law."

    a. Is the FDIC conducting a quantitative cost-benefit analysis to evaluate the costs of loans being offered at higher interest rates against the benefit of these loans being available?

    b. Has the FDIC conducted any cost-benefit analysis to justify the proposed rule? If not, what is the justification for moving forward with the proposed rule if the FDIC "is not aware of any broad effects on credit availability as a result of *Madden,"* as stated in the proposal?

<u>For The Honorable Rodney E. Hood</u>

1. In the past three years, the open balance of auto loans held by credit unions has grown from $305.1 billion to $358.6 billion, and credit unions have the second-highest market share of used auto financing.[8] Auto loan delinquencies are now at their highest rate in the past two decades, with more than 7 million Americans at least 90 days late on an auto loan.

    a. How are you monitoring the rising balance of auto loans held by credit unions, and what is your assessment of this growth?

    b. Auto loans issued by credit unions have the lowest 30- and 60-day delinquency rates relative to other types of lenders, and these rates have remained relatively steady for the past few years. What is keeping credit u8nion default rates lower than other types of lenders, and do you anticipate any future rises in defaults on auto loans held by credit unions? If so, how are you ensuring credit unions are prepared for those rising defaults?

2. Please describe what the NCUA views as the greatest risks to the Share Insurance Fund. For each area of risk identified, describe what the NCUA is doing to monitor and address those risks.

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[8] Experian, "State of the Automotive Finance Market Q3 2019," Melinda Zabritski, Fall 2019, https://www.experian.com/content/dam/marketing/na/automotive/quarterly-webinars/credit-trends/2019-q3-experian-automotive-safm.pdf.