

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

For the Honorable Randal K Quarles

BB&T-SunTrust Merger

Competitive Effects

1. The Fed evaluated how the transaction would affect competition in 81 geographic markets.¹ 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. Approval Order mentions that the Board has considered the relative shares of total deposits in insured depository institutions that BB&T would control.² 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.³
 - 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.

¹ Federal Reserve System, “Order Approving the Merger of Bank Holding Companies,” <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

² Id.

³ 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.
 - a. Are any executives who were in the chain of command responsible these violations in a leadership position of the new Truist Bank?
 - b. In the last five years, SunTrust was the subject multiple enforcement actions, including by the Fed, the Securities and Exchange Commission, the Consumer Financial Protection Bureau, the Department of Justice and multiple state attorneys general.⁴ 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.⁵ 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). 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]."⁶ This effect on accessibility included eight branch closures in low-income tracts and 21 closures in moderate-income tracts.
 - 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

⁴ 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

⁵ 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

⁶ Id.

moderate-income (LMI) communities across the eastern United States.” 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.”⁷

Following this statement, the 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.”⁸

- 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?
- 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.⁹
 - 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?

⁷ Id.

⁸ Id.

⁹ 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>

4. In assessing the convenience and needs factor, the Fed considered the supervisory views of the Consumer Financial Protection Bureau.¹⁰
 - 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.¹¹ 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."
 - a. Countrywide was a \$200 billion institution when it failed.¹² Washington Mutual was \$307 billion.¹³ Their failure presented material risks to the financial system. 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. And yet you concluded last month that the \$450 billion BB&T—SunTrust merger would not increase risks to financial stability. Was this research considered in the context of the BB&T-SunTrust merger?¹⁴
 - 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 interconnectedness and complexity. 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

¹⁰ Federal Reserve System, "Order Approving the Merger of Bank Holding Companies," <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20191119a1.pdf>

¹¹ 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>

¹² 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>

¹³ 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>

¹⁴ "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

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."¹⁵
 - a. Were you one of those senior level regulators?
 - 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?

Community Reinvestment Act Reform

In response to questioning during the December 5, 2019 hearing, you stated that the proposal to modify the Community Reinvestment Act (CRA) released this week by the FDIC and OCC "has benefited from a lot of Fed input."

1. Please describe which aspects of the proposal were based on input from the Fed.
2. Please describe why the Federal Reserve declined to join the FDIC and the OCC in their proposed rulemaking. Specifically:
 - a. Did career Fed staff disagree with or were otherwise unable to independently verify the analysis on the expected effects of the proposal?
 - b. Does the Fed believe the proposed rule could negatively impact credit availability and affordability among low-income and minority populations?
 - i. If so, which aspects of the proposal trigger those negative effects? Please include any qualitative or quantitative analysis done by the Fed.

¹⁵ 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>

- c. When in the rulemaking process did the Fed determine that it would not join the proposal? Were there any issues not addressed by the questions above that contributed to the proposal?
3. Will the Fed be releasing a separate reform proposal? Is it a possibility that the Fed will join the agencies in issuing a final rule? If so, what assurances would the Fed need to feel comfortable joining?
4. What are the consequences of different banks having a different set of CRA requirements to follow based on their regulator?
 - a. How would CRA changes impact the Fed's review of CRA-performance for bank mergers? If CRA-ratings are based on different sets of standards for each regulator, how will the Fed be able to objectively compare CRA-performance among the banks?

Climate Change Risk

1. On January 25, I signed a letter to Chairman Jay Powell regarding information on the Federal Reserve's steps to identify and manage climate-related risks in the U.S. financial system.¹⁶ Chairman Powell's response on April 18 was disappointing, deferring responsibility to climate-related actions to other agencies.¹⁷
 - a. Chairman Powell's April 18 response stated, "The Board's framework provides a systemic way to assess financial stability; however, some potential risks do not fit neatly into that framework."¹⁸ However, central banks around the world, including the Bank of England are far more aggressive in taking steps to incorporate climate-related risks in their financial stress tests.¹⁹ The Network for Greening the Financial System, a group of 18 central banks and bank supervisors has also acknowledged that "climate-related risks are a source of financial risk [and it is] within the mandates of Central Banks and Supervisors to ensure the financial system is resilient to these risks."²⁰
 - i. Please explain why the Federal Reserve System's framework does not currently incorporate climate-related risks in assessing financial stability, despite other international efforts to do so.

¹⁶ Letter from 20 Senators to Chairman of the Board of Governors of the Federal Reserve System Jerome Powell, January 25, 2019,

<https://www.schatz.senate.gov/imo/media/doc/Letter%20to%20Federal%20Reserve,%20OCC,%20FDIC%20re%20Climate%20Change.pdf>.

¹⁷ Letter from Chairman of the Board of Governors of the Federal Reserve System Jerome Powell to Senator Warren, April 18, 2019, <https://www.schatz.senate.gov/imo/media/doc/Chair%20Powell%20to%20Sen.%20Schatz%204.18.19.pdf>.

¹⁸ *Id.*

¹⁹ Reuters, "BOE to stress test its financial system against 'climate pathways': Carney," Kanishka Singh, October 8, 2019, <https://www.reuters.com/article/us-climate-change-boe-carney/boe-to-stress-test-its-financial-system-against-climate-pathways-carney-idUSKBN1WN0GS>.

²⁰ Network for Greening the Financial System, "NGFS First Progress Report," October 2018, <https://www.banque-france.fr/sites/default/files/media/2018/10/11/818366-ngfs-first-progress-report-20181011.pdf>.

2. On November 8, the Federal Reserve Bank of San Francisco held a conference on “The Economics of Climate Change,” which focused on “[discussing] quantifying the climate risk faced by households, firms, and the financial system; measuring the economic costs and consequences of climate change; accounting for the effects of climate change on financial asset prices; and understanding the potential implications of climate change for monetary, supervisory, and trade policy.”²¹
 - a. In her speech at the conference, President and Chief Executive Officer of the Federal Reserve Bank of San Francisco Mary Daly stated, “The Federal Reserve’s job is to promote a healthy, stable economy. This requires us to consider current and future risks – whether we have a direct influence on them or not. Climate change is one of those risks.”²²
 - i. Does the Board of Governors of the Federal Reserve System disagree with President Daly’s remarks that state that Federal Reserve is required to consider climate-related risks?
 1. If so, please explain the position that the Federal Reserve is not required to consider climate-related risks.
 2. If not, why has the Federal Reserve System not considered climate-related risks in its oversight of the financial system thus far?
 - b. During the conference, Federal Reserve Governor Lael Brainard stated that “Climate risks are projected to have profound effects on the U.S. economy and financial system,” and that the “Federal Reserve has important responsibilities for safeguarding the stability of our financial system so that it can continue to meet household and business needs for financial services when hit by negative shocks. Similar to other significant risks, such as cyberattacks, we want our financial system to be resilient to the effects of climate change.”²³
 - i. Has the Federal Reserve System formally assessed the systemic risks that climate change could pose to the financial system? If so, what tools and models does the Federal Reserve System use to inform those assessments?
 - ii. Has the Federal Reserve System assessed if the financial system is resilient to climate-related risks or taken any actions to increase the financial system’s resilience to climate change?

Other Topics

²¹ Federal Reserve Bank of San Francisco, “The Economics of Climate Change,” November 8, 2019, <https://www.frbsf.org/economic-research/events/2019/november/economics-of-climate-change/>.

²² Federal Reserve Bank of San Francisco, “Why Climate Change Matters to Us,” Mary Daly, November 8, 2019, <https://www.frbsf.org/our-district/press/presidents-speeches/mary-c-daly/2019/november/why-climate-change-matters-to-us/>.

²³ Board of Governors of the Federal Reserve System, “Why Climate Change Matters for Monetary Policy and Financial Stability,” Lael Brainard, November 8, 2019, <https://www.federalreserve.gov/newsevents/speech/brainard20191108a.htm>.

1. A report released by the Financial Stability Board, of which you are currently chair, highlighted the risks of technology companies entering the banking sphere to the broader financial system.
 - a. Can you please describe how both the FSB on an international level and the Federal Reserve on a domestic level are monitoring and evaluating these risks?
 - b. Does the Federal Reserve have the sufficient tools to monitor and address these risks under the current regulatory framework?
2. On the Frequently Asked Questions page regarding the proposed FedNow services, it states that additional analysis is required to fully evaluate the relevant operational, risk, and policy considerations for both the Federal Reserve Banks and service participants. When does the Fed expect to complete this analysis?