BANK POLICY INSTITUTE

Statement by the Bank Policy Institute

Before the U.S. House Committee on Financial Services Subcommittee on Consumer Protection and Financial Institutions
"The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System"

September 29, 2021

Chair Waters, Chair Perlmutter, Ranking Member McHenry, Ranking Member Luetkemeyer and Members of the House Financial Services Subcommittee on Consumer Protection and Financial Institutions:

The Bank Policy Institute welcomes the opportunity to provide comments on the hearing titled *The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System.*

On August 20th, the Bank Policy Institute published a research note addressing many of the important issues covered by this hearing. The note, *Bank Merger Applications in Law and Practice* by BPI staff Paul Calem and Gregg Rozansky, addresses the robust existing regulatory process for bank mergers. Areas considered by the agencies when reviewing merger and acquisition applications include:

1. The convenience and needs of the communities to be served and the subject banks' record of compliance with the Community Reinvestment Act;
2. The effectiveness of the applicant in combating money laundering;
3. The financial resources and prospects of the applicant;
4. The managerial resources and prospects of the applicant; and
5. Risks to the U.S. banking or financial system (financial stability)

The attached note delves deeper into this process.

Thank you for considering our views.

Bank Merger Applications in Law and Practice

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With the recent issuance of an Executive Order by President Biden on promoting competition in the American economy, questions about the credibility of the regulatory approval process governing bank mergers have come to the forefront. Regarding banking, the Executive Order calls on the Department of Justice in consultation with the federal banking agencies to review existing guidelines on bank mergers. This directive reflects concerns expressed recently by some lawmakers and academics who have accused regulatory agencies of "rubber stamping" mergers that may erode competition, harm consumers or pose risk to the financial system in a stress event.[1]

This note reviews the regulatory approval process for bank mergers, with illuminating references to approval orders from many of the most prominent bank mergers and acquisitions that have occurred over the past 15 years and to findings from Federal Reserve and other research studies. The facts presented demonstrate not a rubber stamp but rather a deliberating, rigorous process. Time and again, the process includes *de facto* minimum eligibility standards to even file an application and often results in the applicants being encouraged to withdraw the application or, particularly when large banks merge, required to divest acquired assets.[2]

THE REGULATORY APPROVAL PROCESS FOR BANK MERGERS

Bank M&A transactions are typically reviewed by the U.S. Department of Justice (DOJ) from an antitrust perspective and by the relevant federal bank regulatory agencies from that perspective as well as respecting other criteria established in banking laws and regulations.[3] The DOJ has independent authority to prevent the consummation of a bank merger irrespective of whether it has received approval from the appropriate federal banking agency.[4]

All proposed bank M&A transactions require a regulatory application or prior notice. While bank mergers are subject to the same antitrust laws as any other corporate combination –

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[1] See Leah Nylan, "Bank mergers come into Democrats' antitrust crosshairs," *Politico* 4/19/2021.

[2] For significant merger transactions, regulators, including the Federal Reserve Board, typically publish an analysis of factors influencing the regulator's decision with respect to the application. For example, transactions approved by the Federal Reserve Board result in a published approval order accessible on the Federal Reserve Board website.

[3] The Bank Holding Company Act ("BHCA"), Bank Merger Act ("BMA") and other federal statutes and their implementing regulations prescribe the processes for filing these applications as well as the specific criteria under which applications are evaluated. The Federal Reserve is the banking agency responsible for reviewing applications to acquire bank holding companies, banks and certain nonbank financial institutions under the BHCA. To expedite the review and approval process, the Federal Reserve's Board of Governors delegates approval authority to the relevant regional Reserve Bank for applications that pass certain initial screens (i.e., those applications for less complex transactions). These screens include those that indicate the likelihood of any competitive harm associated with a transaction.

Under the BMA, which applies to merger transactions involving insured depository institutions, the primary federal regulator of the depository institution (i.e., the Federal Reserve, the OCC or the FDIC, as the case may be) that survives the transaction is the agency responsible for the application.

[4] See, for instance, "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?" Board of Governors of the Federal Reserve System.

the Clayton and Sherman Acts – bank M&A transactions are also subject to an industry-specific statutory and regulatory framework. Thus, in addition to the competitive impact of the transaction, there are five specific criteria under which bank mergers and acquisitions are evaluated for approval by the applicable bank regulator:

i. The convenience and needs of the communities to be served and the subject banks' record of compliance with the Community Reinvestment Act;
ii. The effectiveness of the applicant in combating money laundering;
iii. The financial resources and prospects of the applicant;
iv. The managerial resources and prospects of the applicant; and
v. Risks to the U.S. banking or financial system (financial stability)

Banking organizations that have identified a specific acquisition target frequently discuss the transaction with their bank regulators in advance of any proposed transaction announcement.[5] An important purpose of the pre-filing meeting is to discuss the contents of the application including key issues that the regulator would like the applicant(s) to address in the application. In many cases, organizations determine not to file an application based on feedback provided during pre-filing meetings – or, otherwise, based on feedback from the bank's examiners or simply a recognition of the minimum standards employed by the agencies in approving applications – rather than risk having to withdraw the application later or having it denied. This is especially the case where a bank does not meet certain objective approval criteria highlighted in regulatory guidance such as the Federal Reserve's Supervision and Regulation (SR) Letter 14-2 including a composite CAMELS rating of 1 or 2, a "management" rating of at least a 2 or a Community Reinvestment Act rating of at least "satisfactory."

It is also not uncommon for an application to be withdrawn after it has been filed. Withdrawals often happen after the agency staff has informed the applicant that a significant issue exists that likely would preclude an approval recommendation by agency staff.

According to Federal Reserve data, from 2011 to 2021, approximately 10 percent of 2,352 bank merger and acquisition applications were withdrawn.[6] The Federal Reserve publicly reports that many of these applications were withdrawn due to significant issues that would have resulted in Federal Reserve staff recommending withdrawal.[7] For example, the Federal Reserve reported that of the 19 proposals withdrawn in the second half of 2020, 12 proposals were withdrawn by the applicants after consultation with Federal Reserve staff.[8]

Once filed, an application for merger or acquisition is subject to extensive review by the appropriate regulatory agency. The time from formal filing of an application to merge with or acquire another institution to the approval decision typically exceeds 40 days, according to Federal Reserve data. Especially in cases that receive adverse public comment, the median time between filing and approval of M&A applications with the Federal Reserve has ranged between three and almost seven months in the years 2017 through 2020.[9] In the second half of 2020,

[5] See "Implementation of a New Process for Requesting Guidance from the Federal Reserve Regarding Bank and Nonbank Acquisitions and Other Proposals", Board of Governors of the Federal Reserve System, SR 12-12, dated July 11, 2012.
[6] See "Board of Governors of the Federal Reserve System: Semiannual Reports on Banking Applications Activity" (federalreserve.gov) (providing information regarding the applications filed by banking organizations and reviewed by the Federal Reserve as of the most recent reporting period ending on June 30 and December 31 of each calendar year). The most recent Federal Reserve Semiannual Report on Banking Applications Activities covers applications activity from July 1 to December 31, 2020. See also "Enhancing Transparency in the Federal Reserve's Applications Process", Board of Governors of the Federal Reserve System, SR 14-2/CA 14-1, dated February 24, 2014.
[7] See id.
[8] See id.
[9] See id.

M&A proposals that did not receive adverse public comments were approved on average in 67 days, versus an average of 232 days for the four M&A proposals that received adverse comments.

Competition analysis. The guidelines applied by the DOJ to bank mergers have more restrictive concentration thresholds than the Horizontal Merger Guidelines that the DOJ and FTC have used since 2010 to review mergers in any other industry. [10] As is the case with any industry, the DOJ (and the banking agencies) calculate the implied change in the Herfindahl-Hirschman Index (HHI), a commonly accepted measure of market concentration. In the bank M&A context, the HHI measures the extent to which deposits are concentrated at a small number of banks. [11] An increase in the HHI of more than 200 points in conjunction with a post-merger HHI exceeding 1,800 in any relevant banking market yields a presumption of competitive harm. [12] This contrasts with every other industry for which, since 2010, the DOJ has applied a more permissive 200/2,500 HHI standard.

It is straightforward for the parties to a prospective merger or acquisition to calculate the effect of the transaction on the HHI in each relevant geographic area. Banks and their merger counsel will do so as part of their due diligence before moving forward on the transaction. Thus, generally they do not file an application when the HHI threshold would be violated for many markets, or they file expecting that they will be required to divest some branches. In other words, they make decisions and judgments based on the rules laid out beforehand.

Any market where competitive harm is presumed becomes subject to closer scrutiny by DOJ and/or the regulatory agency conducting the antitrust review of a proposed transaction. Mitigating factors may come into play, such as significant competition from credit unions that make the market more competitive than was indicated by the banks-only measure, or the merger may be conditioned on divestiture of branches to limit the increase in the HHI. Furthermore, and importantly, federal and state laws cap the size of an institution resulting from a bank merger. These include state-level deposit caps that, at a minimum, prohibit banks from gaining more than 30 percent of the federally insured deposits in any state, and a national deposit cap of 10 percent that applies to interstate transactions. Section 622 of the Dodd-Frank Act also sets a national liability cap in bank M&A transactions. As a result of the statutory caps, the very largest banking institutions are effectively enjoined from engaging in sizeable bank M&A activities.

Federal Reserve Board orders are accessible online for 45 M&A transactions since 2005 that are associated with bank holding companies that today have at least 50 billion dollars in assets; these are listed in Appendix 1. An examination of these orders corroborates that banks avoid transactions that would likely raise competitive issues, and regulatory scrutiny of proposed transactions is rigorous.

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[10] See "Bank Merger Competitive Review -- Introduction And Overview" (1995) (justice.gov)

[11] The HHI is calculated as the sum of squared market shares in a local banking market. Generally, the deposits of all institutions with a commercial bank charter receive 100 percent weight and the deposits of all institutions with a thrift charter (i.e., savings banks and savings and loan institutions) receive 50 percent weight in computing market shares for initial screening of competitive effects. However, in the context of conducting closer scrutiny, the HHI may be recalculated with 100 percent thrift inclusion or with 50 percent inclusion of credit union deposits, if this is seen as appropriate based on an analysis of the banking activities of these competitor institutions.

[12] The concentration thresholds applied in the competitive test for bank mergers have been unchanged since 1985 despite significant evolution in the competitive landscape in banking. In the current competitive environment, banks face increased competition on a national scale, especially via FinTech firms and online banking, across all traditional banking product segments. Moreover, availability of new financial data sources and analytics promotes competition in banking markets, especially in the areas of consumer and small business credit. Recognizing that the current standard may have become outdated, the DOJ in September 2020 put forth a request for comment on updating bank merger analysis for consistency with "new competitive elements in the financial sector." The Bank Policy Institute's response to this request details how the competitive environment has changed and why the concentration thresholds for banking mergers should be the same as for other industries.

Most of the transactions, simply put, raised no competitive issues. The combining institutions operated in different geographic markets, or the calculated effects on market concentration were well within the acceptable range as specified in the DOJ guidelines.

In a quarter (11) of the merger cases on this list, approval was conditioned on branch divestitures. The merging institutions were required to divest branches in some geographic markets as a means of limiting their post-merger market share or precluding market dominance.

In three other cases, an enhanced analysis of potential competitive effects was conducted in response to increases in market concentration exceeding DOJ thresholds, although approval in these cases was not conditioned on divestures.[13] In these cases, as well as in several that required divestitures, key mitigating factors were identified and assessed to be consistent with approval of the merger.

Key mitigating factors discussed include significant competition from credit unions and the attractiveness of a market for entry of new competitors. Notably, empirical studies find evidence that certain factors make a local banking market attractive for entry, which in turn can have procompetitive effects.[14]

Further confirmation of the strength of the merger review process is demonstrated in a 2018 study from the Federal Reserve Bank of St. Louis examining market concentration trends over the period 1994 through 2017.[15] As seen in the chart below, reproduced from that study, urban banking markets have not become less competitive over time. As of 2017, about 28 percent of urban markets were highly concentrated, roughly the same as in the latter half of the 1990s.[16]

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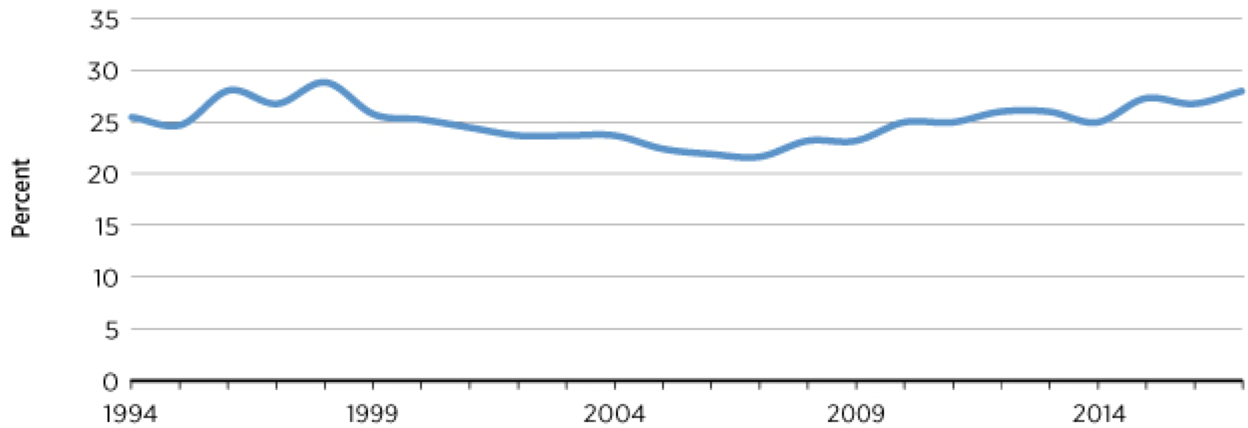
[13] These were PNC Financial Services Group / Mercantile Bankshares Corporation; Mitsubishi UFJ Financial Group / Pacific Capital Bancorp; and First Horizon National Corporation / Iberiabank.

[14] Factors identified as making a market attractive for entry in these studies and by the regulatory agencies in their merger reviews include market growth and past entry. See, for example, Robert M. Adams and Dean F. Amel, "The Effects of Past Entry, Market Consolidation, and Expansion by Incumbents on the Probability of Entry in Banking," *Review of Industrial Organization* 48 (2016) pp. 95-118. Entry in particular may enhance availability of small business credit, as documented by Allen N. Berger, Seth Bonime, Lawrence G. Goldberg, and Lawrence J. White, "The Dynamics of Market Entry: The Effects of Mergers and Acquisitions on Entry in the Banking Industry," University of South Carolina Scholar Commons, October 2004.

[15] See Andrew P. Meyer, "Market Concentration and its Impact on Community Banks," Federal Reserve Bank of St. Louis *Regional Economist*, April 12, 2018.

[16] In contrast, most rural markets have long been highly concentrated. The Federal Reserve Bank of St. Louis study finds that the percentage of rural markets that are highly concentrated ranged between 85 and 87 percent during 1994 through 2012. It rose marginally after 2012, reaching 89 percent as of 2017. This increase likely reflects a decline in the number of banks in rural markets due to branch closings among community and regional banks.

Percentage of Urban Banking Markets that Are Highly Concentrated



SOURCES: Federal Deposit Insurance Corp. and author's calculations.

NOTES: Highly concentrated markets are those banking markets with a Herfindahl-Hirschman Index greater than 1,800. Under Department of Justice guidelines, mergers within these markets generally require greater antitrust scrutiny.

■ FEDERAL RESERVE BANK OF ST. LOUIS

The convenience and needs of the communities to be served and the subject banks' record of compliance with the Community Reinvestment Act. The primary convenience-and-needs factor is the parties' record of performance under the Community Reinvestment Act. Convenience and needs considerations also include the parties' record of compliance with fair lending statues and consumer regulations.[17]

As stated in the Federal Reserve's Supervisory Letter 14-2, "proposals involving institutions with less-than-satisfactory consumer compliance ratings or other significant consumer compliance issues face barriers to approval and have been discouraged." Institutions with less-than-satisfactory CRA ratings are on notice not to file M&A applications and on the infrequent occasions that they do, face a major impediment to approval. Thus, for instance, all banks associated with the 45 M&A transactions listed in Appendix 1 were rated either satisfactory or outstanding (i.e., one of the two highest CRA ratings given by the bank regulatory agencies) in their most recent CRA examination, with the lead bank of the acquirer rated outstanding in most cases.[18]

Even then, convenience and needs evaluations consider more than just the CRA rating. For instance, a bank's community reinvestment activity after its most recent exam is another factor considered. For example, with CIT Group's 2015 acquisition of IMB (the parent company of OneWest Bank), the regulatory agencies paid much attention to weaknesses in OneWest's CRA compliance program, even though it had most recently been rated satisfactory and was the *acquiree*.[19] The acquisition was approved only after a revised CRA plan (with input from

[17] Moreover, bank M&A transactions are subject to public notice requirements to allow stakeholders outside of the bank regulatory community and the DOJ to review and comment upon applications, especially whether the applicants meet the needs of their communities. In the case of larger transactions, the agencies often hold public meetings to receive feedback from the community.

[18] In 29 of these cases, the lead bank of the acquiring institution had been rated outstanding.

[19] Another example, illustrating a non-CRA convenience and needs consideration, is the attention given in the BB&T merger with SunTrust to concerns that SunTrust had engaged in misleading and unfair marketing and billing practices regarding products offered to business customers. The Federal Reserve's approval order was issued alongside a Consent Order that, among other things, required the merged institution to "create a procedure for verifying that the restitution previously provided by SunTrust Bank has been appropriate and for providing additional restitution if required."

members of the public) had been reviewed and approved by the OCC.[20] More typically, acquirers with satisfactory ratings demonstrate a record of improving CRA performance, and many proposed transactions are associated with commitments to expand specific CRA programs.

***The effectiveness of the applicant in combating money laundering*.** BSA/AML enforcement actions can have a significant impact on a bank's ability to engage in transactions, since the effectiveness of its efforts in combating money laundering are expressly required to be considered by the banking agencies when evaluating proposals subject to the BMA and the BHCA.[21] Agency guidance goes further than the statutory requirement by providing that significant AML program violations and/or deficiencies that result in even an informal enforcement action are generally preclusive of approval.[22]

The M&T acquisition of Hudson City in 2015 illustrates the importance of BSA/AML compliance in obtaining regulatory approval for bank mergers and acquisitions. In this case, M&T had already submitted its application when examiners identified weaknesses in the bank's BSA/AML and consumer compliance programs. As a result (as described in the Federal Reserve's approval order), approval was delayed until steps toward remediation were well underway.

The financial resources and prospects of the applicant. The bank regulatory agencies expect that applicants be in sound financial condition on a current and *pro forma* basis. This means that the resultant bank and holding company are expected to be "well capitalized" under applicable capital guidelines.[23] Other expectations include: (i) the holding company serves as a 'source of strength' to its subsidiary banks (i.e., there are significant resources at the parent company level), and (iii) transactions are not funded by short-term debt.

The agencies view inadequate financial resources as effectively dispositive as acquisitions that create or exacerbate financial issues can cause a rapid deterioration in the combined institution's financial wherewithal and create a larger resolution problem. In the Federal Reserve's approval orders for each of the 45 major transactions cited previously, the Board finds that the acquirer has sufficient financial resources to absorb the costs of the proposal and complete the integration of the banks' operations, and that the combined organization would be well capitalized, illustrating the application of the above criteria.

The managerial resources and prospects of the applicant. "Managerial resources" are defined by statute to "include the competence, experience and integrity" of the officers, directors and principal shareholders of the applicant bank.[24] In practice, the banking agencies generally regard an unresolved compliance issue and/or enforcement order as preclusive of an M&A approval (although the statute provides instead that, at most, they should be considered). The agencies have suggested, in general terms, that a ban on acquisitions for applicants

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[20] In addition, the application was not approved until OneWest's compliance with a recent Consent Order issued by the OCC, related to the bank's foreclosure practices, had been verified.

[21] Section 327 of the USA Patriot Act: (i) amended section 3(c) of the BHCA and requires that the Federal Reserve take into consideration the effectiveness of an applicant company in combating money laundering activities, when the Federal Reserve acts on an application to acquire a bank, and (ii) requires the agencies to consider the effectiveness of an insured depository institution in combating money laundering activities, in connection with any application filed under the BMA. See SR Letter 02-8: "Implementation of Section 327 of the USA Patriot Act in the Applications Process" (Mar. 20, 2002).

[22] For example, Federal Reserve SR letter 14-2 contemplates such an approach.

[23] The law governing interstate bank merger transactions, Riegle-Neal, for example, provides that the responsible federal banking authority may approve an application for an interstate merger only if such agency determines that the resulting bank would be "well capitalized" (and "well managed") upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4)(B).

[24] See 12 U.S.C. § 1842 (c)(5).

with a compliance issue – or a rating of a "3" for "management" or a composite "3" for safety and soundness – may be necessary to avoid diversion of managerial resources from remediation of those compliance issues. [25]

In certain cases, regulatory authorities will formally prohibit bank expansion via the terms of an enforcement order, but as noted above, it is more often the case that applicants with compliance issues will simply put expansionary plans on hold. They may be discouraged from filing an application or encouraged to withdraw an application that has already been filed.

In other cases (e.g., the M&T acquisition described previously), regulatory approval will be withheld until those issues have been resolved. In general, a banking organization must not only cure the issue and have the cure validated by internal audit but also must demonstrate that remediation is "sustainable" to the satisfaction of bank examiners. That process could take over a year (and sometimes several years) even when the bank proactively remedies the issue.

***Financial stability assessment*.** The 2010 Dodd-Frank Act added the so-called "financial stability factor" to the list of statutory considerations for bank transactions.[26] In making its financial stability assessment, the Federal Reserve has considered five factors in determining the "systemic footprint" of the merged firm: size; substitutability of providers for critical products and services; interconnectedness; contribution to complexity of the financial system; and the extent of cross-border activities. These factors roughly align with the factors that the Board (and Basel Committee) has used to determine systemic risk for purposes of determining whether a firm is a "global systemically important bank" (GSIB) and thereby subject to higher loss absorbency requirements.[27]

There is little reason to believe that the Federal Reserve underplays its responsibility for assessing the financial stability implications of proposed mergers. The approval orders for the recent mergers of BB&T with SunTrust and of PNC with BBVA highlight the Federal Reserve's substantive approach. In both cases, the approval order incorporated a quantitative analysis of each financial stability metric as well as qualitative factors. In addition, the GSIB surcharge score of the combined organization (a measure of a firm's systemic importance) was calculated and found to be far below the minimum threshold that identifies a financial institution as a GSIB.[28]

It is natural that such mergers between two large institutions would generate consideration around financial stability, given the resulting, outward shift in the overall size distribution of U.S. banking organizations. However, it is important to consider that the current, sized-based ("enhanced prudential standards") rules governing capital and liquidity requirements set stringent safety and soundness standards for all institutions larger than $250 billion in assets in the U.S., helping to mitigate financial stability concerns. For instance, such institutions (whether GSIBs

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[25] According to Federal Reserve SR letter 14-2, "The [Federal Reserve] expects that a banking organization will resolve all material weaknesses identified by examiners before applying to engage in expansionary activity." The OCC's Licensing Manual, Business Combinations (occ.gov) (July 2018) states that in the context of MRAs and program deficiencies, the OCC assesses the nature and duration of the issues, the institution's progress in remediating identified program deficiencies, and whether the proposed combination would detract from the remediation, exacerbate existing problems, or create new problems for the resulting institutions. In the context of an enforcement action or less than satisfactory ratings, the Manual simply states that in these circumstances the bank should consult with its supervisory office and Licensing Division before pursuing any plans for a combination.

[26] According to recent bank M&A orders, the Federal Reserve generally presumes that a proposal does not raise material financial stability concerns if the assets involved fall below certain size thresholds (proposals involving an acquisition of less than $10 billion or resulting in a combined firm with less than $100 billion in total assets.)

[27] See Baer, Greg, "The Financial Stability Factor in Bank M&A: Lessons from the BB&T Order," February 4, 2020, https://bpi.com/the-financial-stability-factor-in-bank-ma-lessons-from-the-bbt-order/

[28] In the case of BB&T with SunTrust, the Federal Reserve's analysis determined that the combined organization would have a GSIB method 1 score of 29 points, well below the minimum (130 basis point) GSIB threshold and suggestive of relatively little systemic risk (less than 10 percent of the average score of the top five institutions). Similarly, in the case of PNC with BBVA, the Federal Reserve calculated the combined institution's GSIB method 1 score to be 42 points, again well below the minimum threshold. This score was close to PNC's current method 1 score, "indicating that the transaction would not increase materially PNC's systemic importance."

or not) are subject to the annual supervisory stress test, which directly calibrates their capital requirement through the stress capital buffer, and to the single counterparty credit limit standard, which helps mitigate interconnections.

Issues for future research. While a gross mischaracterization to refer to the regulatory review process for bank mergers as a "rubber stamp," it is fair to pose and explore questions about judgmental aspects of the process. What elements can be validated, refined or strengthened through empirical research?

For instance, as noted, approval decisions are sometimes supported by findings that a market is "attractive for entry," and several empirical studies provide support for a relationship between entry and declines in market concentration. However, we are not aware of any study assessing whether use of this criterion as a mitigating factor in merger decisions yielded the intended longer-term outcome. That is, was the increase in market concentration associated with the merger ultimately mitigated by entry by other depository institutions?

How mergers may impact the "convenience and needs of the communities to be served," particularly in the context of small business lending, is another issue meriting further study. Independent of its effects on market competitiveness, a merger may be disruptive to some established relationships between a bank and its small business loan customers.[29]

For example, a recent study from the Federal Reserve Bank of Philadelphia finds evidence that acquisition of a community bank tends to negatively impact small business lending in the target bank's market when the acquirer is an institution without a prior presence in the market.[30] Another recent study finds that branch consolidation accompanying large bank mergers during 1999 through 2012 were associated with declines in small business loan volume.[31]

At the same time, mergers often are associated with efficiency gains, including improvements to cost and risk management that can help increase small business lending of the overall, combined institution over the long term. A convenience and needs assessment must weigh both potential costs and benefits. Research that explores how best to conduct such assessments might be worth pursuing.

CONCLUDING COMMENTS

This note rebuts the notion that regulatory approvals of bank mergers have become a "rubber stamp" because of a lack of denials or court challenges. Rather, the banking agencies employ a deliberating, rigorous process that, time and again, winnows out applications that would not pass the robust antitrust, community reinvestment, BSA/AML, financial resources, managerial competence and financial stability standards. Moreover, transparency about the standards that have governed these reviews for many years means that well-counseled banks typically do not propose inappropriate mergers to begin with.

Especially among large merger transactions over the past 15 years, the merging institutions were frequently required to scale back their combined market shares via divestiture of branches as a condition for approval, thereby maintaining banking market competitiveness. Adherence to DOJ banking merger guidelines is further

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[29] Evidence suggests that ongoing banking relationships remain important in small business lending, with small businesses particularly dependent upon local banks for obtaining credit. See, for example, Robert M. Adams, Kenneth P. Brevoort, and John C. Driscoll, "Is Lending Distance Really Changing? Distance Dynamics and Loan Composition in Small Business Lending," Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series, February 2021.
[30] See Julapa Jagtiani and Raman Maingi, "How Important Are Local Community Banks to Small Business Lending? Evidence from Mergers and Acquisitions." Federal Reserve Bank of Philadelphia Working Paper, August 2019.
[31] See Hoai-Luu Q. Nguyen, "Are Credit Markets Still Local?" American Economic Journal: Applied Economics 11(1), January 2019, pp. 1-32.

reflected in the fact that there has been little change in the percentage of urban banking markets that are considered highly concentrated. Moreover, the agencies have conservatively applied other statutory considerations – those relating to CRA and safety and soundness ratings as well as consumer compliance and AML-related supervisory findings.   These effectively function as dispositive standards that preclude approval, and sometimes even merely the filing, of applications until remediation is found to be "sustainable" to the satisfaction of bank examiners.

Financial stability concerns are comprehensively addressed in the Federal Reserve's review of proposed M&As of larger transactions. A multi-dimensional, detailed assessment of financial stability risks is conducted, utilizing key, quantitative metrics along with examination of qualitative factors.

Nonetheless, there is a role for future research focusing on judgmental aspects of merger reviews. Examples of issues for further research include identification and quantification of factors that may mitigate an increase in market concentration, and how best to approach convenience and needs analysis of effects on small business lending.   The goal of such research would be to identify ways to strengthen the merger review process and to bolster the public's confidence in it.

APPENDIX 1: APPROVED MERGERS INVOLVING LARGE BANK HOLDING COMPANIES SINCE 2005

1. Mergers with Divestures

M&A Event	# overlapping markets	# markets with divestiture	# of branches to be divested
BB&T Corporation / First Citizens Bancorp (2006)	6	1	1
Regions Financial Corporation / AmSouth Bank (2006)	67	17	52
PNC Financial Services Group / National City Corporation (2008)	10	5	61
TD Bancorp / South Financial Group (2010)	5	1	(Unspecified--to total $59 billion in deposits)
Wells Fargo & Co / Wachovia Corporation (2011)	49	6	6
BB&T Corporation / Susquehanna Bancshares (2015)	5	1	2
Huntington Bancshares / FirstMerit Corporation (2016)	27	3	13
KeyCorp / First Niagara (2016)	12	1	18
First Horizon National Corporation / Capital Bank Financial Corporation (2017)	11	1	2
BB&T Corporation / Suntrust Banks (2019)	81	7	30
Huntington Bancshares / TCF Financial Corporation (2021)	20	5	9

2. Other Mergers

Capital One Financial Corporation / Hibernia Corporation (2005); NY Community Bancorp / Long Island Financial (2005); PNC Financial Services Group / Mercantile Bankshares Corporation (2005); PNC Financial Services Group / Riggs National Corporation (2005); Bank of America Corporation / MBNA Corporation (2006); BB&T Corporation / Main Street Banks (2006); Capital One Financial Corporation / North Fork Bancorporation (2006); Compass Bankshares / TexasBank Holding Co. (2006); Huntington / Unizan Financial (2006); Synovus Financial Corp / Riverside Bancshares (2006); Bank of New York / Mellon Financial Corporation (2007); Huntington Bancshares / Sky Financial (2007); Banco Santander / Sovereign Bancorp (2008); Bank of America Corporation / Countrywide Financial Corporation (2008); KeyCorp / USB Holding (2008); PNC Financial Services Group / Sterling Financial Corporation (2008); Bank of America Corporation / Merrill Lynch (2009); Bank of Montreal / Marshall & Isley Corporation (2011); Comerica Incorporated / Sterling Bancshares (2011); M&T Bank Corporation / Wilmington Trust Company (2011); Capital One Financial Corporation / ING Bank (2012); Mitsubishi UFJ Financial Group / Pacific Capital Bancorp (2012); PNC Financial Services Group / RBC Bank (2012); BB&T Corporation / National Penn Bancshares (2015); CIT Group / IMB Holdco (2015); M&T Bank Corporation / Hudson City Bancorp (2015): Royal Bank of Canada / City National Corporation (2015); Canadian Imperial Bank of Commerce / PrivateBancorp (2017); People's United Financial / Suffolk Bancorp (2017); TIAA / Everbank Financial Corporation (2017); Synovus Financial Corporation / FCB Financial Holdings (2018); Fifth Third Bancorp / MB Financial (2019); First Horizon National Corporation / Iberiabank (2020); PNC Financial Services Group / BBVA USA Bancshares (2021).