ANB Bank

May 31, 2022

Via Email to Comments@FDIC.gov

Federal Deposit Insurance Corporation (FDIC)
550 17th Street NW
Washington, D.C. 20429
Attn: James P. Sheesley, Assistance Executive Secretary
Comments—RIN 3064-ZA31

Re: Request for Comment on Rules, Regulations, Guidance, and Statement of Policy on Bank Merger Transactions (RIN 3064-ZA31) ("Request for Comments")

Ladies and Gentlemen:

On behalf of ANB Bank ("ANB"), thank you for the opportunity to comment on the current regulatory framework that applies to merger transactions involving one or more insured depository institutions and its effectiveness in meeting the requirements of the Bank Merger Act. We have responded below to Questions 5, 6(b), (d) and (e), and 10 in the Request for Comments.

Background

ANB is a $3.2 billion community bank headquartered in Denver, Colorado, with 30 locations in Colorado and Wyoming. ANB serves a diverse range of communities throughout the two states, including rural communities in Wyoming and western Colorado. ANB is a true community bank whose deposit, lending and other services are critical to many, especially those in the rural communities it serves. As a community bank, ANB understands and appreciates the importance of both (a) maintaining access to depository institutions in small, underserved communities and (b) reducing barriers to mergers of small depository institutions.

Response to Request for Comment

To provide a more informative analysis of mergers of depository institutions, the Herfindahl-Hirschman Index ("HHI") from the 1995 Bank Merger Competitive Review Guidelines ("1995 Guidelines") must be updated. In particular, ANB recommends the following changes: (1) include in the HHI analysis, with 100% weighting, the deposits reasonably allocated to the applicable market of all credit unions and thrift institutions with a physical presence in the applicable market; (2) expand the definition of the applicable market for mergers of depository institutions in rural areas to include the broader geographic region as a whole in which the members of rural communities currently seek banking services, as opposed to limiting the market to one of the counties that was demarcated a hundred or more years ago; and (3) provide for presumptive approval of merger transactions between small depository institutions, such as those in which the combined institutions would have assets of less than $10 billion, unless public commentators produce compelling data to show not only that the merger would significantly reduce competition, but also that rare external factors (*e.g.*, low internet and cellular penetration) pose significant barriers to entry in the relevant market.

Question 5. In addition to the HHI, are there other quantitative measures that the federal banking agencies should consider when reviewing a merger application? If so, please describe the measures and how such measures should be considered in conjunction with the HHI. To what extent should such quantitative measures be differentiated when considering mergers involving a large insured depository institution and mergers involving only small insured depository institutions?

Whether applied as a separate quantitative measure or as part of the HHI analysis, in reviewing a merger application, federal banking agencies should include, with 100% weighting, the deposits reasonably allocated to the applicable market of all credit unions and thrift institutions with a physical presence in that market. Currently, credit unions are presumptively weighted at 50% weight in applying the HHI and at other times weighted at 100%, while thrift institutions are weighted at 50%. These distinctions are no longer appropriate (especially in the case of credit unions), and both credit unions and thrift institutions should be included in competition analysis at 100% weight.

These proposed changes reflect the realities of the current banking market. In the last 30 years, credit unions have developed significantly in two key areas. First, credit unions have generally broadened membership criteria so that they are in many cases no longer effectively limited as to membership in a geographic area or by any other measure of exclusivity or common bond.[1] Second, credit unions are increasingly acquiring banks.[2] In light of these changes, the HHI should apply 100% weight to credit unions when performing merger analysis.

Similarly, when the 1995 Guidelines were adopted, thrift institutions provided a limited range of services, mostly to consumers. Since then, thrift institutions have steadily expanded their offerings so that they now offer many of the same products and services as commercial banks and credit unions to both businesses and consumers.[3] The HHI should include thrifts with 100% weighting to reflect the actual competition in the marketplace.

Lastly, the federal banking agencies should consider as a separate quantitative measure the total assets of the combined institutions. In particular, if the combined institutions that are party to a merger are small depository institutions that would have combined assets of less than $10 billion, there should be a presumptive approval of the merger transaction unless public commentators produce compelling data to show not only that the merger would significantly reduce competition, but also that rare external factors pose significant barriers to entry in the relevant market.

[1] *See, e.g.*, National Credit Union Administration, *Chartering and Field of Membership*, 12 CFR Part 701, https://www.ncua.gov/support-services/credit-union-resources-expansion/field-membership-expansion; DepositAccounts, *The Big List of Credit Unions Anyone Can Join*, https://www.depositaccounts.com/credit-unions/anyone-can-join/.

[2] Bryan Yurcan, *Why Are So Many Credit Unions Buying Banks?*, The Financial Brand, Sept. 13, 2021, https://thefinancialbrand.com/121801/why-are-so-many-credit-unions-now-buying-community-banks/.

[3] *See* Rosemary Carlson, *An Overview of Thrift Institutions*, The Balance Small Business, Dec. 6, 2019, https://www.thebalancesmb.com/thrift-institution-393341; Kelly Pike, *How Thrift and Mutual Banks Are Benefitting Their Customers*, Independent Banker, May 1, 2022, https://independentbanker.org/2022/05/how-thrift-and-mutual-banks-are-benefitting-their-customers/.

Question 6. How and to what extent should the following factors be considered in determining whether a particular merger transaction creates a monopoly or is otherwise anticompetitive?

> ***Factor (b): Rapid economic change has resulted in an outdated geographic market definition and an alternate market is more appropriate.***

This factor is critical because the ultimate question the HHI is addressing in its competitive analysis is the effect that the proposed merger will have on the provision of goods and services in the market at issue. For example, the HHI is applied on a county level for rural areas that are not part of an established metropolitan area (MSA). These counties were determined a hundred or more years ago and often do not match the realities of today's economic activity. Confining a measurement to a county, rather than the broader applicable region, can lead to irrelevant or even misleading results. Although subjective, another factor that federal banking agencies may consider in determining the relevant market is the availability to customers of banking products and services through online banking, regardless of whether or not the provider has a physical presence in the applicable market.

> ***Factor (d): A thrift institution is actively engaged in providing services to commercial customers, particularly loans for business startup or working capital purposes and cash management services.***

Due to the products and services now provided by thrift institutions to community members, thrifts should be included in the HHI analysis with full weight. Please see our response to Question 5 for more specific comments related to thrifts.

> ***Factor (e): A credit union has such membership restrictions, or lack of restrictions, and offers such services to commercial customers that it should be considered to be in the market.***

As further described in response to Question 5, credit unions are providing an increasingly broad offering of consumer and small business banking products and services and membership is virtually unrestricted, so that credit unions should be included in the HHI analysis with full weight. Please see our response to Question 5 for more specific comments related to credit unions.

Question 10. To what extent would responses to Questions 1–9 differ for the consideration of merger transactions involving a small insured depository institution? Should the regulations and policies of the FDIC be updated to differentiate between merger transactions involving a large insured depository institution and those involving a small insured depository institution? If yes, please explain. How should the FDIC define large insured depository institutions for these purposes?

The federal banking agencies should consider approving all proposed combinations of small insured depository institutions in which the combined institutions would have assets of less than $10 billion unless public commentators produce compelling data to show not only that the combination would significantly reduce competition, but also that rare external factors, such as low internet and cellular penetration, pose significant barriers to entry in the relevant markets.

Conclusion

As set forth above, to improve the analysis of mergers of depository institutions, ANB recommends the following changes be made to the federal banking agencies' analysis of merger transactions: (1) include in the HHI analysis, with 100% weighting, the deposits reasonably allocated to the applicable market of all credit unions and thrift institutions with a physical presence in the applicable market; (2) expand the definition of the applicable market for mergers of depository institutions in rural areas to include the broader geographic region as a whole in which the members of rural communities currently seek banking services, as opposed to limiting the market to one of the counties that was demarcated a hundred or more years ago; and (3) provide for presumptive approval of merger transactions between small depository institutions, such as those in which the combined institutions would have assets of less than $10 billion, unless public commentators produce compelling data to show not only that the merger would significantly reduce competition, but also that rare external factors (*e.g.*, low internet and cellular penetration) pose significant barriers to entry in the relevant market.

Thank you again for the opportunity to comment. Please feel free to call Susan Sturm or Koger Propst at 303-394-5100 with any questions about our comments.

Very truly yours,

[redacted]

Koger L. Propst
President and CEO
ANB Bank