United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

WASHINGTON, DC 20510-6075

April 23, 2019

Hon. Jelena McWilliams
Chair
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Chair McWilliams,

Branch Banking & Trust (BB&T) and SunTrust's application to merge into the sixth largest bank in the United States raises significant financial stability, anticompetitive, and public interest concerns that must be scrutinized carefully by the Board of Directors of the Federal Deposit Insurance Corporation (FDIC).[1] It is no coincidence that the largest merger since the 2007-2008 financial crisis comes less than a year after the passage of S. 2155, which loosened the rules for the large banks and which industry analysts predicted would accelerate big bank consolidation.[2] The federal banking agencies have gone even further by reducing capital, liquidity, and stress testing requirements for the largest institutions. Meanwhile, community banks are struggling to compete in an environment that increasingly favors Wall Street megabanks.

Legislative giveaways and regulatory rollbacks have already amplified the potential for the biggest banks to threaten our financial system. Further consolidation by large banks would make matters even worse. Federal Reserve staff research shows that the impact of financial stress on the real economy increases with the size of a bank.[3] Washington Mutual, the largest bank failure in the United States and a significant catalyst to the financial crisis, held just $307 billion in total assets.[4] Countrywide Financial, another catalyst, had just $200 billion in assets.[5] A combined BB&T-SunTrust would far surpass both of those institutions, with $442 billion in total assets.[6]

A merger of this scale not only increases systemic risk and concentration, but it could also decrease competition.[7] BB&T and SunTrust operate in many of the same geographic areas;

[1] *See* 12 U.S.C. 1828(c)(5).
[2] French, David and Michelle Price, "U.S. banks set for M&A wave as Trump cuts red tape," Reuters, Feb. 23, 2018, https://www.reuters.com/article/us-usa-m-a-banks-analysis/u-s-banks-set-for-ma-wave-as-trump-cuts-red-tape-idUSKCN1G71Z6
[3] Lorenc, Amy G., and Jeffery Y. Zhang (2018). "The Differential Impact of Bank Size on Systemic Risk," Finance and Economics Discussion Series 2018-066. Washington: Board of Governors of the Federal Reserve System, https://doi.org/10.17016/FEDS.2018.066.
[4] Crisis and Response: An FDIC History, 2008-2013 at 200, https://www.fdic.gov/bank/historical/crisis/crisis-complete.pdf.
[5] FDIC, "A year in Bank Supervision: 2008 and a Few of its Lessons," Supervisory Insights (Summer 2009) at 7.
[6] BB&T and SunTrust to Combine in Merger of Equals to Create the Premier Financial Institution, Press Release, February 7, 2019, http://investors.suntrust.com/news/news-details/2019/BBT-and-SunTrust-to-Combine-in-Merger-of-Equals-to-Create-the-Premier-Financial-Institution/default.aspx
[7] *See* 12 U.S.C. § 1828(c)(5).

sharing 740 branches within a 2-mile radius.[8] According to their merger application, there are overlapping branch operations in 80 banking markets, some of which reflect increased levels of market concentration.[9]

I am concerned the proposed merger could harm Americans in several ways. Increased corporate profits for consolidated megabanks often come at the expense of consumers and employees through job losses, branch closures, and reduced credit availability.[10] BB&T and SunTrust have stated that they would save $1.6 billion annually, but they have not explained how many jobs would be eliminated or which branches will be closed or consolidated.[11] While both banks have assured me that they will consider community credit needs, availability of banking services, and redlining or fair lending risk, among other factors, before closing a branch, they have a history of mortgage fraud and lending discrimination.[12]

There is reason for concern that these banks will not meet the needs of the communities that they currently serve. The decision to hold public meetings on April 25, 2019, in Charlotte, North Carolina, and May 3, 2019, in Atlanta, Georgia, is encouraging. It is troubling, however, that under the Trump Administration more bank mergers are being approved and at a faster rate.[13] Moreover, private conversations between regulators and the banks seeking merger approval are all too common.[14] This is not the way to increase transparency and invite public participation in a decision that will affect more than 10 million households in the United States.[15]

The FDIC must ensure that such a consequential merger proposal is decided by the FDIC Board, and not under delegated authority. BB&T and SunTrust's overlapping geographic footprints could have a significantly adverse effect on competition in those and other markets, which should trigger consideration by the full board.[16] Furthermore, the FDIC Board has established guidelines to consider the most consequential and precedential matters before the agency at the

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[8] Transformational Merger of Equals to Create The Premier Financial Institution at 22, Feb. 7, 2019, https://bbt.investorroom.com/download/Transformational+Merger+of+Equals+to+Create+The+Premier+Financial+Institution+%28Presentation%29.pdf.

[9] Application to the FDIC by BB&T for prior approval to acquire by merger SunTrust Bank at 32, http://s2.q4cdn.com/438932305/files/doc_downloads/2019/03/4.0-BBT-SunTrust-FDIC-Application-Final_3379807_1.pdf.

[10] Ensign, Rachel Louise and Coulter Jones, "How Bank of America Ditched 1,597 Branches Across the U.S.," Wall Street Journal, Sept. 17, 2018, https://www.wsj.com/articles/how-bank-of-america-ditched-1-597-branches-across-the-u-s-1505646000?mod=article_inline; Garber, Johnathan, "SunTrust and BB&T used a word that should terrify their employees," Markets Insider, Feb. 7, 2019, https://markets.businessinsider.com/news/stocks/suntrust-banks-bbt-say-merger-will-have-synergies-2019-2-1027933698; Carow, Kenneth A., Edward J. Kane, Rajesh Narayanan, How Have Borrowers Fared in Banking Mega-Mergers?, NBER Working Paper Series, June 2004, https://www.nber.org/papers/w10623.pdf.

[11] Transformational Merger of Equals to Create The Premier Financial Institution at 22, Feb. 7, 2019, https://bbt.investorroom.com/download/Transformational+Merger+of+Equals+to+Create+The+Premier+Financial+Institution+%28Presentation%29.pdf.

[12] *See, e.g.*, Dept. of Justice, Press Release, Sept. 29, 2016, https://www.justice.gov/opa/pr/branch-banking-trust-company-agrees-pay-83-million-resolve-alleged-false-claims-act-liability; SIGTARP, Press Release, Jul. 3, 2014, https://www.sigtarp.gov/Press%20Releases/SunTrust_Nonprosecution_Agreement_Press_Release.pdf; Dept. of Justice, Press Release, May 31, 2012, https://www.justice.gov/opa/pr/justice-department-reaches-21-million-settlement-resolve-allegations-lending-discrimination; BB&T Community Reinvestment Act Performance Evaluation, Jan. 22, 2008, https://www5.fdic.gov/crapes/2008/09846_080122.PDF.

[13] Clozel, Lalita, "Bank Mergers Get Faster Under Trump," Wall Street Journal, Feb. 13, 2019, https://www.wsj.com/articles/bank-mergers-get-faster-under-trump-11550059200.

[14] Kress, Jeremy, "Fed is a rubber stamp for bank mergers – it's a problem," American Banker, April 10, 2019, https://www.americanbanker.com/opinion/fed-is-a-rubber-stamp-for-bank-mergers-its-a-problem.

[15] BB&T and SunTrust to Combine in Merger of Equals to Create the Premier Financial Institution, Press Release, Feb. 7, 2019.

[16] *See* Delegations of Authority Relating to Filings and Enforcement Matters, Section D, FDIC Board Res. No. 071098 (December 2, 2002).

board level.[17] The proposed merger of BB&T and SunTrust clearly fits the bill – it is not only the largest merger since the financial crisis, signaling the beginning of a surge in megabank consolidation,[18] but would also result in the largest bank the FDIC has ever supervised as the primary federal regulator.

It is imperative that the FDIC consider this merger proposal thoroughly, with the utmost transparency and accountability. To explain how the FDIC will evaluate this merger, please respond to the following questions by May 6, 2019.

1. How many times has your agency met or communicated with BB&T, SunTrust, or their representatives regarding the proposed merger in the six months prior to the public announcement? Please provide the dates and participants of each meeting.

2. How are risk to financial stability, convenience and needs of the community, and public interest and benefits weighted in comparison to other factors considered under the Bank Merger Act and Community Reinvestment Act? Are the effects of the merger on the banks' workforce considered in any of these factors?

3. BB&T and SunTrust have not publicly identified the number of branches that would close or consolidate, including in rural and LMI areas. To what extent will the FDIC consider branch closures in its evaluation of the proposed merger? Please provide information the FDIC may have regarding the number and location of branches identified for potential closure or consolidation.

4. The FDIC's Statement of Policy on Bank Merger Transactions describes the process by which the agency will analyze the competitive effects of a proposed merger transaction. BB&T's merger application to the FDIC, however, focuses on the Federal Reserve's analysis of the competitive effects, which they "understand is consistent with the FDIC's analysis." Please explain the FDIC's analysis, and the extent to which it is the same or different from the Federal Reserve's. Please provide the FDIC's data and analysis of the transaction's competitive effects and the report on competitive factors from the Attorney General, as well as the specific rubric guiding such analysis.

5. Just last week, the Federal Reserve terminated an order against BB&T for weaknesses in the bank's BSA/AML compliance. The FDIC terminated its consent order in June 2018. Under the Bank Merger Act, the FDIC must consider the effectiveness of each bank in combatting money laundering activities. Please explain how BB&T has resolved the BSA/AML deficiencies cited in the December 2016 consent order. Is BB&T's BSA/AML compliance program mature enough to withstand a merger that will double the size of the institution?

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[17] FDIC Board Res. No. 074956 (June 19, 2007).
[18] Sutherland, Brooke, "BB&T Solves Jamie Dimon's 'Too Many Banks' Problem," Bloomberg, Feb. 7, 2019, https://www.bloomberg.com/opinion/articles/2019-02-07/bb-t-suntrust-merger-may-start-wave-of-bank-consolidation.

6. Will the decision to approve or deny the merger application be made by the full Board of the FDIC? If not, please explain why, to whom the decision will be delegated, and on what basis.

If approved, the combined bank would be significantly larger than any other insured depository institution for which the FDIC serves as primary regulator. Not only must this decision be made by the board, which is directly accountable to Congress, but also a decision of this magnitude deserves consideration by a full five-member FDIC Board. The merger cannot be approved until internal directors of the FDIC are nominated and confirmed.

Thank you for your attention to this important matter. I look forward to your response.

Sincerely,

[redacted]

Sherrod Brown
Ranking Member

FEDERAL DEPOSIT INSURANCE CORPORATION

JELENA McWILLIAMS
CHAIRMAN

May 13, 2019

Honorable Sherrod Brown
United States Senate
Washington, D.C. 20510

Dear Senator Brown:

Thank you for your letter regarding the pending application for the merger of SunTrust Bank, Atlanta, Georgia and Branch Banking and Trust Company, Winston Salem, North Carolina (BB&T). Your letter poses a number of questions related to the application, including questions about contacts between the applicant and the Federal Deposit Insurance Corporation (FDIC), as well as evaluation of the relevant statutory factors, possible branch closings, and decision authority within the FDIC.

As background, the merger agreement contemplates that, subject to necessary approvals, the parent bank holding companies of the respective institutions will be merged prior to the merger of the subsidiary institutions. As such, separate applications have been submitted to the Federal Reserve Bank of Richmond and the FDIC.

The proposed merger was publicly announced on February 7, 2019. Prior to the public announcement, FDIC staff and management engaged in contacts with BB&T management. With regard to the proposed merger, these contacts involved management and staff of the FDIC's Atlanta Regional Office (which is assigned primary supervisory responsibility for BB&T) and the FDIC's Washington Office, and included the following:

- On February 1, 2019, BB&T Chairman and Chief Executive Officer (CEO) Kelly King informed me by telephone that BB&T would contact FDIC staff regarding a possible merger transaction.
- On February 2, 2019, BB&T Chief Risk Officer (CRO) Clarke Starnes emailed FDIC staff to request a meeting on February 4, 2019.
- On February 4, 2019, CRO Starnes met with the FDIC's Examiner-In-Charge (EIC) of BB&T and other agency representatives, and provided notification of the proposed merger.
- On February 4, 2019, Doreen Eberley, Director of the FDIC's Division of Risk Management Supervision, spoke with BB&T Chairman King.
- On February 6, 2019, CRO Starnes emailed the FDIC's EIC of BB&T regarding the proposed announcement date.

Supervised institutions routinely make contacts such as these with their primary regulator prior to commencing a proposed merger or acquisition.

Merger transactions are considered under the framework of Section 18(c) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1828(c). The FDIC will fully consider all factors under that framework, which include:

1) Whether the proposed merger transaction would result in a monopoly;
2) Whether the effect of the proposed merger in any section of the country would substantially lessen competition or tend to create a monopoly, or in any other manner restrain trade, unless the responsible agency finds that the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;
3) The financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the U.S. banking or financial system;
4) The effectiveness of any insured depository institution involved in the transaction in combatting money laundering activities, including in overseas branches; and
5) Whether, upon consummation of the transaction, the resulting insured depository institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the U.S.

The effects of the proposed merger on each institution's workforce are considered within the broad context of managerial resources, which encompass integration planning and execution, as well as ongoing operational capabilities. The FDIC assesses the competitive effects of the proposed transaction, including the products and services offered by the merging institutions and to be offered by the resulting institution, as well as the Department of Justice's competitive analysis of the merger.

With respect to possible branch closures, BB&T's April 16, 2019 response to the agencies' information request indicated that no definitive decisions have been made regarding specific branches to be closed or consolidated as a result of the merger. An institution must submit a branch closing notice to the appropriate Federal banking agency, as well as to bank customers, no later than the first day of the 90-day period ending on the date proposed for the closing.

Regarding efforts to combat money laundering, the FDIC will conduct a comprehensive review of compliance with the Bank Secrecy Act and anti-money laundering regulations by the insured depository institutions involved in the transaction.

Finally, the decision to approve or deny the application in this matter will be made by the FDIC Board of Directors.

If you or your staff have further questions or comments, please do not hesitate to contact me at (202) 898-6868 or M. Andy Jiminez, Director, Office of Legislative Affairs, at (202) 898-6761.

Sincerely,

[redacted]

Jelena McWilliams