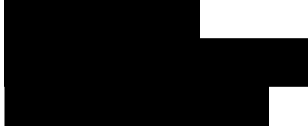
From: Gary G Jacobs
Sent: Friday, April 01, 2022 1:18 AM
To: Comments
Subject: [EXTERNAL MESSAGE] RIN 3064-ZA 31
Attachments: FDIC Request for Comments.docx

Please see my comments attached re: "Request for Information and Comments on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions."
Thank you,
Gary

Gary G Jacobs

956-724-3911 office

Request for Comment

The FDIC is seeking comment on all aspects of the existing regulatory framework that applies to bank merger transactions. In responding to the following questions, the

be: $100^2 = 10{,}000$: for a market with five equal competitors with equal market shares, the HHI would be: $20^2 + 20^2 + 20^2 + 20^2 + 20^2 = 2{,}000$.

[29] Section 2 of the Interagency Guidelines, available at *www.justice.gov/atr/bank- merger-competitive-review-introduction-and-overview-1995*.

FDIC asks that commenters please include quantitative as well as qualitative support for their responses, as applicable.

Question 1. Does the existing regulatory framework properly consider all aspects of the Bank Merger Act as currently codified in Section 18(c) of the Federal Deposit Insurance Act? Not really. I think FDIC/OCC and Fed should re-examine economic goals of this important regulation. The most important sentence in your "Request" document is page 4: "Over the same 30-year period, the number of institutions with assets of less than $10Billon has declined from 15,099 in 1910 to 4,851 in 2020, a reduction of approximately 68%. The footnote also tells the story.

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Question 2. What, if any, additional requirements or criteria should be included in the existing regulatory framework to address the financial stability risk factor included by the Dodd-Frank Act? Are there specific quantitative or qualitative measures that should be used to address financial stability risk that may arise from bank mergers? If so, are there specific quantitative measures that would also ensure greater clarity and administrability? Should the FDIC presume that any merger transaction that results in a financial institution that exceeds a predetermined asset size threshold, for example $100 billion in total consolidated assets, poses a systemic risk concern? I don't believe that the U.S. became the most prosperous and creative country on earth because Americans have a higher I.Q. than the rest of the world. One of the most important reasons we grew and were able to create a higher standard of living, innovate and out produce(and consume) the rest of the world was because of how our Commercial Banking system was structured. We had many more banks than most of the rest of the developed and developing world combined. When we had 15,000 unit banks, and over decades developed a proliferation of physical branches, ordinary people had easy access to risk capital…credit for their profession or business. Loan syndications were led by FDIC insured banks through a network of "Correspondent" banks. There were no "Venture Capitalists" because the banks took the risk in

their loan portfolios. The banks were the “Venture Capital” lenders from sometime after the creation of the Federal Reserve System until regulatory policy and Congress changed the system.

With each so called “banking crisis” the regulatory system attempted to solve problems by allowing and encouraging the rolling up of smaller banks into larger, theoretically better managed banks. The result is an uncomfortable concentration of deposits and loans in the Mega Banks. The mergers have forced borrowers to look outside of the commercial banks for loans.

With each crisis,Washington felt better destroying the vast network of community banks and smaller metropolitan area banks, confident that the Mega Banks would fill the void. At least on the lending side, they have not and probably will never be able to fill the void. They are too big to actually KNOW their customers. Entrepreneurs need to be able to sit at a table or desk with a lender and pitch their needs. People need to look each other in the face, read each other and develop a ‘relationship’…Lending to “creative capitalists” involves risk. Today the system has become pretty risk averse. An old banker friend of mine used to say: “Banking is the management of risk, not the avoidance of risk.” Banks should be able to take risk and lose once in a while without getting destroyed or being forced to merge.

My belief is that if we want to return to solid GDP growth above very low single digits, we need to change the structure of the banking system. IF we want to grow GDP and grow small and medium size business as well as grow large businesses, we do not need giant banks. We used to have a system of Correspondent Banks. That really disappeared. We should revive it. Dodd-Frank, well intentioned as it was meant to be by authors, has resulted in central underwriting of risk loans by regulators. Not the way to grow either job creation in the private sector or the banking system.

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Question 3. To what extent should prudential factors (for example, capital levels, management quality, earnings, etc.) be considered in acting on a merger application? Should bright line minimum standards for prudential factors be established? If so, what minimum standard(s) should be established and for which prudential factor(s)? Break up the Mega Banks! Congress should pass a new banking bill with hard stop size limits on concentration of deposits. Treat all Money Market Mutual funds and MM accounts outside of the FDIC system as if they are in the system. Level the playing field.

Capital Adequacy is overrated. Banks do not fail(typically) because they run out of capital. They fail because they run out of liquidity! Well managed banks can operate on much lower capital ratios, but not the Mega Banks. Mega Banks are too big to effectively regulate and too big to manage efficiently and too big to dispense credit efficiently and adequately. They are too big period. There is no way they can “credit score” the next Elon Musk, owner of the chain of French bakeries, owner of farms and ranches, machine tool inventor, and on and on. Networks of contacts matter in dispensing credit. Smaller banks can be more responsive to credit needs than Mega Bank.

Question 4. To what extent should the convenience and needs factor be considered in acting on a merger application? Is the convenience and needs factor appropriately Make mergers more difficult until you achieve a goal of doubling the number of unit banks with physical branches.

defined in the existing framework? Is the reliance on an insured depository institution's successful Community Reinvestment Act performance evaluation record sufficient? Are the convenience and needs of all stakeholders appropriately addressed in the existing regulatory framework? To what extent and how should the convenience and needs factor take into consideration the impact that branch closings and consolidations may have on affected communities? To what extent should the FDIC differentiate its consideration of the convenience and needs factor when considering merger transactions involving a large insured depository institution and merger transactions involving a small insured depository institution? To what extent should the CFPB be consulted by the FDIC when considering the convenience and needs factor and should that consultation be formalized?

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?

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? Please address the following factors:

(a) The merging parties do not significantly compete with one another; 18

(b) Rapid economic change has resulted in an outdated geographic market definition and an alternate market is more appropriate;
(c) Market shares are not an adequate indicator of the extent of competition in the market; (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;

(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; (f) There is actual competition by out-of-market institutions for commercial customers, particularly competition for loans for business startup or working capital purposes; and (g) There is actual competition by non-bank institutions for commercial customers, particularly competition for loans for business startup or working capital purposes. With respect to the preceding factors, how and to what extent should the activity of current branches or pending branch applications be considered? All deposit taking institutions should be subject to same regs AND same tax regulations. Credit Unions should be converted to National or State banks.

Question 7. Does the existing regulatory framework create an implicit presumption of approval? If so, what actions should the FDIC take to address this implicit presumption?

Question 8. Does the existing regulatory framework require an appropriate burden of proof from the merger applicant that the criteria of the Bank Merger Act have been met? If not, what modifications to the framework would be appropriate with respect to the burden of proof?

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Question 9. The Bank Merger Act provides an exception to its requirements if the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the insured depository institutions involved in the merger transaction. To what extent has this exception proven beneficial or detrimental to the bank resolution process and to financial stability? Should any requirements or controls be put into place regarding the use of this exemption, for example when considering purchase and assumption transactions in a large bank resolution? Are there attributes of GSIB resolvability, such as a Total Loss-Absorbing Capacity (TLAC) requirement, that could be put into place that would facilitate the resolution of a large insured depository institution without resorting to a merger with another large institution or a purchase and assumption transaction with another large institutions?

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? Think about the opportunity to break up the largest banks and have them spin off regions into new "independent" banks. The parent can retain a minority interest which must be divested over a period of X years. Effectively re-create: The California based B of A, North Carolna National Bank, Republic National Bank(Tx), Texas Commerce Bank, Boatmans, Sea First, etc, etc. Not that hard to do and will be very beneficial to each region and city. Lending should be local.

All single family home loans should be originated in a commercial bank and serviced by that bank for the life of the loan. No sale of servicing rights allowed. The bank can sell all but 20% of the risk loan but the branch closest to the physical location of the home should be the borrowers servicing contact. The system we have that resulted after collapse of the S & L industry is great for high volume origination but performs miserably during a market crunch. Some 25 year old servicer in Idaho in a call center really can't help a struggling borrower in Florida. That borrower needs a banker who understands the local market, can find out something about the character and history of the borrower and decide if the bank wants to help that borrower through a tough time or foreclose. Inflation always bails out banks holding OREO if they have holding power. No need for so many losses in a bad market.

Summary: Look back at how we built the economic engine of the nation. BANKS were the key. A person with dirty overalls and boots could walk in and negotiate a loan because he/she had references or knew someone who knew someone at the bank. Credit scoring might work for consumers but not for businesses which want to grow or run into problems and need time to work out. We should strive for a return to 15,000 or 20,000 banks and not squeeze the system down to 4,000 or less. We need more bank examiners not fewer. We need educated and

experienced examiners who are aware of the importance of allowing banks to take reasonable risks in their loan portfolios.

NET INTEREST MARGIN should matter more than fee income.

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Federal Deposit Insurance Corporation.
By order of the Board of Directors.
Dated at Washington, DC, on December 6, 2021. **Harrel M. Pettway,**
Executive Secretary.

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