From:	lee@fairfinancewatch.org
Sent:	Monday, April 11, 2022 9:51 PM
To:	Comments
Cc:	matthew.lee@innercitypress.com
Subject:	[EXTERNAL MESSAGE] Timely first comment to the FDIC on improving merger reviews (RIN 3064-ZA31)

April 11, 2022

Via Email: Comments@fdic.gov.

FDIC
Attn: James P. Sheesley, Assistant Executive Secretary
Comments—RIN 3064–ZA31,
Federal Deposit Insurance Corporation,
550 17th Street NW, Washington, DC 20429

Re: Comments to the FDIC on improving merger reviews (RIN 3064–ZA31)

Dear Secretary Sheesley:

On behalf of Inner City Press / Fair Finance Watch, this is a first timely comment on the FDIC's Request for Information about merger review.

All three Federal bank regulatory agencies need to improve their merger review to more fulsomely include review of performance under the Community Reinvestment Act and fair lending laws, as well as other negative impacts of recent mergers, from branch closings to raised prices to, yes, layoffs. Some responses:

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?

No - the FDIC (and Federal Reserve and OCC) does not sufficient consider "the probable effect of the transaction in meeting the convenience and needs of the community to be served." When the effect of a transaction includes further denuding lower income communities of branches, that is NOT meeting the convenience or needs of these communities.

Question 2. What, if any, additional requirements or criteria should be included in the existing regulatory framework to address the financial stability risk factor...

Question 3. To what extent should prudential factors (for example, capital levels, management quality, earnings, etc.) be considered in acting on a merger application?

The regulators are far too narrow. One recent example: Fair Finance Watch raised to the FRB and OCC that merger partner MUFG still does business in Russia amid its invasion of Ukraine. This is clearly risky (as well as immoral) and yet the Fed and OCC have not even asked MUFG or its proposed partner about it.

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 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?

COMMENT: It would be absurd to simply defer to CRA ratings, when the regulators rate over 95 of banks Satisfactory or Outstanding. Also, employees are clearly "stakeholders" as the question puts it - yet the Federal Reserve had a footnote implying that no level of job loss is relevant to it in reviewing a merger. The CFPB should be consulted, as should legal data bases of discrimination cases. It must be made easier for the impacted public to comment, and to get copies of the regulators questions to the banks, and the banks answers.

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?

The HHI understates the anticompetitive effects of recent mergers, with small banks being considered competitors to the Top Ten. More public comments, and more public hearings, are needed.

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; (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?

The examples the FDIC gives here imply that it thinks that current antitrust review is too strenuous - but the opposite is the truth. Unless the Antitrust Memo of the administration is meaningless, antitrust review must become more robust.

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?

The FDIC rubber stamps nearly all mergers. The bottom line is, some transactions should be denied. For example, when Investors Bank with its weak fair lending record got a conditional approval from the FDIC, it should have been a denial. The Federal Reserve absurdly allows Reserve Banks, which have no power to deny, to approve applications even by banks with rare Needs to Improve CRA ratings (Berkshire Bank).

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?

COMMENT: The applicants should have to carry their burden and THEN a public comment period open, with sur-reply to the banks' response.

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

These emergency powers have been abused, routinely on work-outs, and especially for example on the Fed allowing Goldman Sachs and Morgan Stanley (now a monopolist) into banking without any public comment period.

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?

While it seems clear the FDIC wants to become even more lax for "small" banks, we oppose that. These banks are key to some communities. There should be more review, and more public participation. There should be (automatic) public hearings. You will be hearing more from Fair Finance Watch, and other organizations including those of which it is a (proud) member.

If you have any questions, feel free to ask by email to lee@financewatch.org or call 718-716-3540.

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