In Response to FDIC's

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

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We appreciate the opportunity to provide comments regarding the FDIC's Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions. The FDIC's request asks whether it should tighten its merger criteria to further restrict mergers among larger mid-size banks. If implemented, such changes would affect the long-term structure of the banking industry and its future competitive environment.

The FDIC notes in its RFI that mergers are evaluated for their effects on competition within a geographically defined market, and under the Bank Merger Act and Bank Holding Company Act the banking regulators and Department of Justice are required to consider the effects on competition, the soundness of the merged bank and the public benefits expected. These standards have traditionally been applied uniformly across the industry regardless of bank size. Where a merger shows evidence of a significant increase in concentration and reduction in competition within the defined market, then the law provides the bank regulator or court with the authority to deny the merger.

The FDIC, in its request for comment, notes that the number of banks in the U.S. has declined from over 12,000 in 1990 to less than 5000 today, and that the industry has become significantly more concentrated. The number of banks exceeding $100 billion dollars has increased since 1990 from 1 to 33. It also notes that the Dodd-Frank Act requires that it weigh a merger's effects not only on competition but on the financial stability of the industry. The FDIC then raises the question of whether institutions exceeding $100 billion in assets should be judged systemically important and be made subject to more rigorous competitive and financial soundness reviews. It goes so far as to ask whether institution of this size should have the burden of proof to show that the effects of the merger would not be systemically unsafe or have negative competitive effects.

We are unconvinced that institutions with assets of $100 million or more, by their size alone, should be presumed to be systemically important and warrant a higher standard of review than other sized banks for either competitive or financial stability effects. While the number of banks over $100 billion has increased since 1990, that should surprise no one since during this period total industry assets have increased from $3.4 trillion to near $24 trillion today. Given the overall growth of the industry, the relative size of a $100 billion bank today is less than .3 percent of total industry assets. Thus, mergers among banks of $100 billion are unlikely to represent either a systemic risk within the economy or result in an undue concentration of deposits at the national level. Presuming that banks with assets of $100 billion are necessarily systemic or that mergers among them would undermine competition is regulatory overreach.

Moreover, from the standpoint of financial stability, asset size is a poor way to determine whether an institution is systemic. Globally accepted standards recommended by the Basel Committee on Banking Supervision use an indicator-based measurement approach that gives equal weight to five categories in determining systemic importance. Asset size is only one category, representing 20% of the determination. The remaining four categories are inter-connectedness, complexity, substitutability, and global reach which each constitute 20%. A large regional bank with a simple domestic business model of taking

deposits and making loans poses much less risk to the system than a smaller globally active bank with complex derivatives, securities, and prime brokerage operations.

As the FDIC also notes, over the period 1990 to the present, the industry has become significantly more concentrated with the 5 largest banks increasing their control of industry assets from approximately 10 percent in 1990 to 57 percent today. Accordingly, large, systemically important institutions have become dominant within the U.S. financial system, and Congress has placed limits on the percent of total deposits that they can acquire through acquisitions in order to impede the further concentration of deposits among these largest banks. Thus, the largest, systemically important institutions that may wish to expand through bank acquisitions, are subject to not only traditional governmental review for their competitive and financial effects within markets but they are uniquely limited in their ability to acquire additional deposits through acquisition. Given these limits, it is questionable whether additional limits on bank mergers are necessary to avoid unwarranted competitive or financial stability effects for the industry.

In addition, if the FDIC chooses to impose tighter standards in judging the appropriateness of mid-tier bank mergers, it should remain aware that such actions may have serious negative unintended consequences. For example, a presumption that mergers of larger regional banks should be discouraged, would introduce a significant entry barrier for regional banks that wish to gain scale and compete with the largest, systemically important banks. Such actions would be viewed favorably by the largest banks as it would protect them from a potential competitor. The largest banks would have fewer challenges to their dominant position in markets across the country, and they would hold a significant competitive advantage.

Finally, if the FDIC and other bank regulators are concerned that the banking industry may come to have too many systemically important banks, it would be more effective to require them to meet enhanced capital standards. The Dodd-Frank Act speaks to the need to control for increased systemic effects, which is applicable most directly to the largest banks that hold over half of all banking assets. Preventing other banks from becoming larger does not reduce the systemic risks presented by the failure of banks that are already too-big-to fail. If anything, by deepening their competitive moats, it increases those risks by making the financial system even more reliant on them. Studies continue to show that higher leverage capital standards, levels above 10 percent, significantly reduce the likelihood of a bank failing.[1] Currently the leverage ratios among the largest banks are in the 6 percent range. Thus, strengthening capital requirements for systemically important banks would best serve the FDIC's goals of reducing systemic financial risk and increasing competition among the largest U.S. banks. It would also create a higher capital hurdle for the creation of new systemic institutions through M&A activity. However, it would do so through a level playing field, and avoid the perverse consequence of insulating existing systemic institutions from increased competition as implied in the FDIC's RFI.

In summary, the FDIC is asking if it should tighten its criteria for approving bank mergers to limit bank concentration and enhance competition while also limiting the number of banks that are too large and complex to fail. These are worthy goals. However, changing bank merger criteria that limit the expansion of midsized banks would not accomplish these goals and might generate unintended and undesirable consequences. Introducing a presumption that bank mergers over a certain size are anti-

[1] Barth, James & Miller, Stephen Matteo, "Benefits and Costs of a Higher Bank 'Leverage Ratio', Journal of Financial Stability, 2018.

competitive and financially unstable will inhibit regional banks from acquiring the needed scale to compete with the largest banks that dominate the industry. It also would do little to address the already significant systemic risk the largest banks pose to the industry and the economy. The better way to promote competitive and stable markets is to apply current antitrust standards consistently across banks and geographic markets while raising capital standards to levels that enable the largest, systemically important banks to better withstand future economic shocks.