



May 31, 2022

VIA E-MAIL ONLY

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-ZA31
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Docket No: RIN 3064-ZA31
comments@fdic.gov

RE: Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions; Docket No: RIN 3064-ZA31

Dear Assistant Executive Secretary Sheesley,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing nearly 200 state and nationally chartered banks, savings banks, and savings and loan associations located in communities throughout the State. WBA appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC's) request for information on the rules, regulations, guidance, and statements of policy regarding bank merger transactions.

WBA believes the existing regulatory framework of the Bank Merger Act and the Banking Guidelines have proven to be solid benchmarks when considering the approval of bank merger applications. However, the factors used in the competitive impact analysis need be broadened to consider the increased amount of services provided beyond traditional, physical branch locations.

WBA also believes FDIC need consider the impact when the surviving entity is one that would no longer be subject to the requirements and community responsibilities of the Community Reinvestment Act (CRA) or to rigorous regulatory scrutiny under both safety and soundness and consumer compliance examinations of FDIC, the Board of Governors of the Federal Reserve System (FRB), and Office of the Comptroller of the Currency (OCC). FDIC should also consider a higher threshold for the Herfindahl-Hirschman Index (HHI) to better gauge the impact of nonbanks acquiring banks.

To the specific questions posed by FDIC, WBA offers the following comments:

- WBA believes the existing regulatory framework generally considers the aspects of the Bank Merger Act. However, the information routinely examined often will not accurately reflect competition in the areas where the institutions operate as many services offered in affected communities are not currently considered. To better illustrate a merger's competitive impact, WBA recommends there also be consideration of services delivered online, including by banks, nonbank firms, mortgage companies, credit unions, and Farm Credit System institutions.

- WBA recommends FDIC not adopt a presumption that a merger transaction involving an institution with \$100 billion or more in assets is automatically a systemic risk. The prudential banking regulators have robust capital standards, additional stress testing, and enhanced risk government requirements meant to protect against concerns over risk. These standards are reviewed and monitored through frequent, rigorous examinations and testing. Asset size alone should not automatically conclude systemic risk.
- WBA believes FDIC already considers prudential factors when acting on merger applications. Current statutory requirements and existing FDIC policy already ensure merger applications meet capital standards and management expectations. Existing FDIC practice is to not approve a merger application if such standards and expectations are met not.
- WBA recommends bank CRA performance be the primary source of input considered regarding convenience and needs of affected communities. Additional supplemental information should also be accepted. By its very design, the CRA regulations measure, examine, and assess a bank's record of how it meets the credit needs of its community, including low- and moderate-income neighborhoods. This comprehensive approach provides a reflection of how a bank serves the communities in which it is doing business.
- WBA recommends the Bureau of Consumer Financial Protection (CFPB) not play a separate role in merger evaluations. The Bank Merger Act already specifies how mergers are to be evaluated by the prudential banking regulators. Neither the Act nor the Dodd-Frank Act give CFPB authority to act in merger application evaluations.
- WBA recommends FDIC retain the use of the HHI. However, FDIC need increase the threshold under which it generally does not challenge proposed mergers or require additional actions to take into consideration the broader sources of competition as mentioned elsewhere in this letter. WBA believes the increase necessary to better gauge the impact of nonbanks acquiring banks, such as mergers involving credit unions purchasing banks.
- WBA recommends FDIC consider the delivery of services electronically and services offered by nonbank companies when making a determination of whether a particular merger transaction creates a monopoly or is otherwise anticompetitive. This broader approach would help smaller institutions who otherwise may be prevented from merging.

FDIC must also consider credit union membership restrictions when making a determination of whether a particular merger transaction creates a monopoly or is otherwise anticompetitive. Despite efforts by the credit union industry and the National Credit Union Administration to gloss over membership restrictions, FDIC must ensure each bank customer affected by the merger application is eligible to be a member of the credit union acquiring the bank before the transaction is approved. FDIC also need further consider the effect of a credit union's product restrictions, commercial lending caps, and commercial lending officer expertise on an affected community and its businesses when merger applications involving credit unions purchasing banks.

- WBA recommends FDIC not adopt the position that existing regulatory framework creates an implied presumption of approval. The current regulatory framework is sufficient. WBA knows many pre-application conversations occur between banks and regulators. The conversations help identify what additional information is needed to address any regulatory

concern or to provide further explanation. Additionally, active communications continue post-application filing to answer follow-up questions and to provide any additionally requested information. While pre- and post-application filing conversations have resulted in a more efficient and transparent application process, the process is not one of a presumed approval.

- WBA recommends the Bank Merger Act maintain the exception to its requirements to act immediately so as to prevent a probable failure of an insured depository institution. The current standards used to assess whether an acquirer is qualified in such a critical situation are sufficient. The applicability of a Total Loss Absorbing Capacity (TLAC) requirement is independent of FDIC action.
- WBA also recommends FDIC consider the impact on an affected community when the surviving entity is one not subject to the requirements and community responsibilities of CRA or to rigorous regulatory scrutiny under both safety and soundness and consumer compliance examinations of FDIC, FRB, and OCC. Further consideration is necessary to protect affected communities from a loss of services when there would no longer be regulatory measurement, examination, or assessment of CRA activities. The loss of robust regulatory examination by FDIC, FRB, and OCC should also be considered to protect affected communities.

Conclusion

While the existing regulatory framework of the Bank Merger Act and the Banking Guidelines have proven to be solid benchmarks when considering the approval of bank merger applications, the competitive impact analysis need include both services delivered electronically and those offered by nonbank companies, greater scrutiny need be made to ensure each bank customer affected by a merger application is eligible to be a member of the credit union acquiring a bank before the transaction is approved, and the HHI threshold need be increased to better gauge the impact of nonbanks acquiring banks.

WBA looks forward to the future opportunity to provide further comment during an open comment period of any proposal as FDIC moves forward with any update to the Banking Guidelines.

Once again, WBA appreciates the opportunity to comment.

Respectfully,



Rose Oswald Poels
President/CEO