

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

July 19, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: July 24, 2019, “The Next Megabank? Examining the Proposed Merger of SunTrust and BB&T.”

The Committee on Financial Services will hold a hearing entitled, “The Next Megabank? Examining the Proposed Merger of SunTrust and BB&T,” at 10:00 a.m. on Wednesday, July 24, 2019, in room 2128 of the Rayburn House Office Building. This will be a single-panel hearing with the following witnesses:

- **Mr. Kelly S. King**, Chairman & Chief Executive Officer, BB&T Corporation
- **Mr. William H. Rogers, Jr.**, Chairman & Chief Executive Officer, SunTrust Banks, Inc.

Overview

On February 7, in what would be a \$66 billion all-stock transaction, BB&T Corporation (BB&T) and SunTrust Banks (SunTrust) announced their intention to merge to create the sixth-largest bank in the United States.¹ The newly formed bank would be called “Truist”² and have approximately \$442 billion in assets, representing the largest bank merger since the financial crisis, pending approval by the Board of Governors of the Federal Reserve (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC). Moreover, the new bank would be the largest ever for which the FDIC has served as primary regulator. Currently, BB&T and SunTrust represent the 16th and 17th largest U.S. banks by asset size, respectively.³

Following the merger announcement, the Federal Reserve and FDIC held two public hearings to allow for public feedback.⁴ During both hearings – held in Charlotte, North Carolina and Atlanta, Georgia – regulators received comments from various stakeholders related to the proposal’s impact on employees, lending activities in low-to-moderate income areas, competition within the affected market areas, and financial stability implications. Additionally, it has been reported that the new bank will cut costs by closing branches, and that roughly 740 of their branches are within two miles of another branch.⁵ Despite convening the two public hearings, a number of concerns persist including the merger’s impact on rural

¹ SunTrust News Release, *BB&T and SunTrust to Combine in Merger of Equals to Create the Premier Financial Institution* (Feb. 7, 2019), at <http://newsroom.suntrust.com/2019-02-07-BB-T-and-SunTrust-to-Combine-in-Merger-of-Equals-to-Create-the-Premier-Financial-Institution>.

² SunTrust News Release, *Merger of Equals Between BB&T and SunTrust Will Create Truist* (June 12, 2019), <http://newsroom.suntrust.com/2019-06-12-Merger-of-Equals-Between-BB-T-and-SunTrust-Will-Create-Truist>

³ S&P Global Intelligence data, Congressional Research Service (CRS) calculations.

⁴ Available at <https://www.federalreserve.gov/newsevents/pressreleases/other20190314a.htm>

⁵ Charlotte Observer, “BB&T, SunTrust merger plan for Charlotte draws mixed reaction from the public,” Charlotte Observer (Apr. 25, 2019), at: <https://www.charlotteobserver.com/news/business/banking/article229593849.html>.

and underserved markets.⁶ The Committee's hearing will examine this proposed merger, the concerns being raised, and whether the American public would be well served if the merger is ultimately approved.

Background

Based in Winston-Salem, North Carolina, BB&T operates over 1,800 retail branches across 15 states and the District of Columbia.⁷ In addition to providing traditional banking services to consumers and businesses, BB&T also has several direct nonbank subsidiaries that provide a variety of financial services, including full-service securities brokerage, insurance products, indirect automobile lending, asset management and capital markets services. As of December 31, 2018, BB&T has nearly \$226 billion in total assets. With its principal office in Atlanta, SunTrust is a Georgia-chartered commercial bank that is a member of the Federal Reserve System. It operates over 1,100 licensed branches in 10 states and the District of Columbia.⁸ As of December 31, 2018, SunTrust has total assets of nearly \$216 billion. Comparingly, SunTrust provides similar banking services to consumers and businesses, however, SunTrust operates a larger investment banking business, while BB&T manages a broader range of insurance products and services.

Under the terms of the agreement,⁹ Mr. King will serve as Chairman and Chief Executive Officer of the new bank until September 12, 2021, after which time he will serve as Executive Chairman of both entities until March 12, 2022, and as a consultant to both entities until September 12, 2022. Mr. King will continue to serve on the board of directors of the new bank until the end of 2023. Mr. Rogers will serve as President and Chief Operating Officer of the new bank until September 12, 2021, at which time he will become Chief Executive Officer of the new bank. He will also serve on the board of directors of the new bank while serving as President and Chief Operating Officer and then as Chief Executive Officer. When Mr. King ceases to serve as Executive Chairman on March 12, 2022, Mr. Rogers will also become Chairman of the board of directors of the new bank. Currently, BB&T and SunTrust are evaluating which of their respective current directors will serve on the combined bank's board of directors.

Furthermore, on July 16, 2019, the two banks announced a Truist Bank Community Benefits Plan to lend or invest \$60 billion to low- and moderate-income (LMI) borrowers and in LMI communities over a three-year period from 2020 to 2022. The \$60 billion three-year commitment includes: \$31 billion for home purchase mortgage loans to LMI borrowers, LMI geographies, minority borrowers and/or majority-minority geographies; \$7.8 billion for lending to small businesses and to support the growth of businesses with revenues less than \$1 million; \$17.2 billion in Community Development Lending (CDL) to support affordable housing development, small business growth lending to nonprofits that support the LMI community; and \$3.6 billion in Community Reinvestment Act (CRA) Qualified Investments and Philanthropy, of which \$120 million will be designated for CRA-qualified philanthropic giving. Additionally, the new bank plans to open at least 15 new branches in LMI and/or majority minority communities across its future footprint.¹⁰

Bank Merger Approval Process

⁶ See Letter from Chairwoman Waters to Federal Reserve Board Chairman Powell and FDIC Chairman McWilliams regarding proposed merger between BB&T and SunTrust (May 8, 2019), at <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=403735>.

⁷ BB&T also maintains a foreign branch office in the Cayman Islands.

⁸ SunTrust Bank also maintains a foreign branch office in the Cayman Islands.

⁹ Supra note 1.

¹⁰ SunTrust, *BB&T and SunTrust Announce \$60 Billion Truist Bank Community Benefits Plan* (July 16, 2019), at <http://investors.suntrust.com/news/news-details/2019/BBT-and-SunTrust-Announce-60-Billion-Truist-Bank-Community-Benefits-Plan/default.aspx>

Under the Bank Holding Company Act, mergers or acquisitions involving control of at least 5% of the acquired bank's shares must be approved by the Federal Reserve.¹¹ Depending on the banks' legal structure, FDIC or Office of the Comptroller of the Currency (OCC) approval may also be required.¹² The Federal Reserve is required to give notice of the merger application to relevant federal and state bank supervisors, allowing them a chance to provide their recommendations to the Federal Reserve. Prior to approving a merger, the Federal Reserve considers, among other things, seven factors¹³ when evaluating an application, specifically: (1) competitive factors, such as whether the merged entity would have monopoly power or anti-competitive effects on the business of banking in any part of the country or whether the public interest in the second factor outweighs any adverse effects on competition; (2) banking and community factors, such as whether the merger serves the convenience and needs of the community; (3) supervisory factors, such as whether the Federal Reserve will have access to all necessary information about the companies; (4) the treatment of certain bank stock transactions when creating a bank holding company; (5) management factors, including whether the banks' officers, directors, and principal shareholders have competence, experience, and integrity; (6) the banks' compliance with money laundering laws and regulations; and (7) financial stability issues, such as whether the merger poses a concentrated systemic risk to the United States banking or financial system.

In addition, banks merging must have a favorable record of consumer compliance and compliance with the Community Reinvestment Act.¹⁴ It is important to note that on 16 occasions, between 2006 and 2017,¹⁵ the Federal Reserve required the banks involved in a merger to sell off branches.¹⁶ According to the Federal Reserve, its "Board of Governors can approve or deny any filing. The Board also may delegate a filing to the [Federal] Reserve Bank, the Secretary of the Board, or the Board's Director of Banking Supervision and Regulation, as appropriate."¹⁷ The Fed may grant a conditional approval to a merger, if it believes that changes must be made in order for the merger to be consistent with the statutory factors and requirements discussed above.¹⁸

Bank Merger Trends

The Federal Reserve has approved the majority of bank merger proposals. However, the Federal Reserve set a record in 2018. According to its own research, the Federal Reserve approved 95% of bank merger applications last year — its highest approval rate since it began keeping track in 2011.¹⁹ In fact, between 2006 and 2017, over 3,800 merger applications were submitted to the agency. During this eleven-year

¹¹ 12 U.S.C. §1842. Under the Bank Merger Act (12 U.S.C. §1828(c)), the Fed also approves mergers involving depository institutions for which they are the primary regulator, including state member banks (i.e., commercial banks that belong to the Federal Reserve system), thrift holding companies, and state member thrifts.

¹² The OCC approves mergers for national banks and the FDIC approves mergers for non-member state banks under the Bank Merger Act. A bank holding company may own either or both of these types of subsidiaries. In the case of the BB&T/SunTrust merger, FDIC approval is also required. See Federal Reserve, Federal Deposit Insurance Corporation, "Proposal by BB&T Corporation to Acquire SunTrust Banks, Inc.," 84 Federal Register 10517, March 21, 2019.

¹³ 12 U.S.C. §1842(c)

¹⁴ P.L. 95-128

¹⁵ Federal Reserve, *Letter to the Honorable Elizabeth Warren*, May 10, 2018, p. 3, at

<https://www.warren.senate.gov/imo/media/doc/Powell%20Response%20re%20Mergers.pdf>.

¹⁶ BB&T and SunTrust are proposing some divestitures in their application. In other cases, they argue divestitures are not warranted despite exceeding the safe harbor guidelines. See BB&T Corporation, *Application to the Board of Governors of the Federal Reserve System*, Statistical Annex, March 8, 2019, p. 3.

¹⁷ Federal Reserve, "Electronic Applications and Applications Filing Information," webpage, at <https://www.federalreserve.gov/supervisionreg/afi/filingstages.htm>.

¹⁸ 12 CFR 225.13(d).

¹⁹ Jeremy Kress, "Fed is a Rubber Stamp for Bank Mergers," *American Banker*, April 10, 2019, at <https://www.americanbanker.com/opinion/fed-is-a-rubber-stamp-for-bank-mergers-its-a-problem>.

period, while 503 applications were withdrawn, 3,316 applications were approved and the Federal Reserve never formally rejected any merger application.

Peaking during the 1990s, bank merger activity averaged roughly 600 a year during the decade, reaching its highest levels in 1997 with 725 announced transactions.²⁰ Merger activity then declined through the 2000s and the financial crisis hampered activity within the industry, highlighted by a cyclical low of 179 mergers announced in 2009. Notably, during this period, a few large banks acquired several major weakened or failing banks. For example, the Federal Reserve and FDIC facilitated the 2008 acquisitions of Wachovia by Wells Fargo,²¹ and of Washington Mutual by JP Morgan.²²

Since the financial crisis, merger activity increased and then stabilized, averaging 239 mergers per year between 2010 and 2018.²³ However, the instances of large institutions merging have been infrequent and show no upward trend during the period. According to a Congressional Research Service (CRS) analysis, most announced mergers involve the acquisition of relatively small banks. Since 2010, in 88% of cases when a bank acquires another bank, the acquired bank had assets of less than \$1 billion, and 1% of acquisitions were for banks with greater than \$10 billion in assets. Among the bank mergers with more than \$10 billion in assets, the proposed merger between BB&T and SunTrust remains a significant outlier. For comparison, SunTrust, with nearly \$216 billion in assets, making it more than twice as large as the next biggest acquired bank in the post-crisis period (ING Bank with \$92.2 billion in assets was acquired by Capital One in a deal announced in 2010), and more than five times as large as the largest acquisition in the last six years (First Niagara with \$39.4 billion in assets was acquired by KeyCorp in a deal announced in 2015).²⁴

Furthermore, experts have suggested mergers activity would increase following the passage of Senator Crapo's financial deregulatory bill in 2018.²⁵ Such consolidation will result in fewer banks (and branches) and deposits being held within larger financial institutions. This trend could leave certain markets that have been traditionally served by smaller depository institutions, particularly rural areas, unserved or underserved.

Perspectives from Advocates and Opponents of the Proposed Merger

BB&T and SunTrust have characteristics that identify as "regional" banking organizations. Both banks have large amounts of assets, mainly attributable to a single depository institution. In addition, both have a relatively high concentration in loan making and deposit taking and a less-than-national geographic footprint. Regional bank proponents²⁶ argue these characteristics make banks, like BB&T and SunTrust, similar to "community" banks, arguing that certain regulations aimed at megabanks should be applied based on criteria that regional banks would not meet. Opponents of this position,²⁷ citing the size of the banks' exposures and the amount of available resources for compliance, contend it is appropriate to subject

²⁰ Federal Deposit Insurance Corporation (FDIC) data at <https://www.fdic.gov/bank/statistical/stats/2019mar/fdic.xls>, CRS calculations.

²¹ Scott G. Alvarez, *The Acquisition of Wachovia Corporation by Wells Fargo & Company*, The Federal Reserve System, Testimony Before the Financial Crisis Inquiry Commission, Washington, DC, September 10, 2010, at <https://www.federalreserve.gov/newsevents/testimony/alvarez20100901a.htm>.

²² Eric Dash and Andrew Ross Sorkin, "Government Seizes WaMu and Sells Some Assets," *The New York Times*, September 25, 2008.

²³ Federal Deposit Insurance Corporation (FDIC) data at <https://www.fdic.gov/bank/statistical/stats/2019mar/fdic.xls>, CRS calculations.

²⁴ S&P Global Intelligence data, CRS calculations.

²⁵ For example, see CNBC, Bank mergers will 'absolutely' accelerate thanks to regulation rewrite, predicts analyst Mike Mayo (March 16, 2018), at <https://www.cnbc.com/2018/03/16/bank-mergers-will-absolutely-accelerate-predicts-analyst-mike-mayo.html>.

²⁶ Available at <https://bankingjournal.aba.com/2019/01/aba-supports-proposals-to-tailor-regulatory-framework-for-regional-banks/>

²⁷ Available at <http://ourfinancialsecurity.org/current-issues-2/regulation-of-large-regional-banks/>

the banks to stringent regulation. In fact, more than 97% of all federally-insured banks have less than \$10 billion in total assets,²⁸ and the proposed new bank would be 44 times larger than a \$10 billion bank.

Impact on Current Employees and Bank Competition

According to BB&T and SunTrust, the merger would result in cost savings of \$1.6 billion attributable to a reduction of expenses related facilities, information technology, third party vendors, and retail branches.²⁹ As discussed earlier, across the combined bank's footprint, there are roughly 740 branches within two miles of another branch. There are questions regarding to what extent the new bank will work with other financial institutions – such as local community banks and minority depository institutions – to the extent the new bank divests of certain bank branches.

Currently, there are about 35,300 BB&T employees,³⁰ and there are about 22,600 SunTrust employees.³¹ It is unclear how both banks intend to provide severance or relocation assistance for employees affected by the proposed merger. In addition, for employees who would like to remain with the new bank, workforce training opportunities remain a concern.

Board and Employee Diversity Considerations

In its merger application to the FDIC, BB&T and SunTrust asserted that their “commitment to diversity and inclusion begins at the top” with who serves on the board of directors and senior executive team.³² The merger will create new opportunities to demonstrate that commitment as BB&T and SunTrust determine which of their respective current and recruited directors will serve on the combined company's board and executive positions.

The combined company will have 22 board seats (3 fewer than if the new company maintained existing board seat totals) and 14 senior executive officers, half of which will be offered by each legacy bank. Diverse board member and executive officer options are available from each legacy bank, including four and seven total diverse candidates from SunTrust's³³ and BB&T's³⁴ current boards, respectively.³⁵ Recent research and hearings by the Committee reiterate the importance and value of board diversity.³⁶

²⁸ FDIC, Quarterly Banking Profile, First Quarter 2019, at <https://www.fdic.gov/bank/analytical/qbp/2019mar/>

²⁹ Available at https://www.thepremierfinancialinstitution.com/content/dam/bbt/premier/pdfs/BBT-SunTrust-Investor-Presentation-2_7_2019.pdf

³⁰ Yahoo! Finance, “BB&T Corporate Profile,” at <https://finance.yahoo.com/quote/BBT/profile>, accessed July 17, 2019.

³¹ Yahoo! Finance, “SunTrust Corporate Profile,” at <https://finance.yahoo.com/quote/STI/profile>, accessed July 17, 2019.

³² BB&T, *Application to the Federal Deposit Insurance Corporation by Branch Banking and Trust Company for prior approval to acquire by merger Suntrust Bank, pursuant to Section 18(c) of the Federal Deposit Insurance Act* (March 8, 2019).

³³ Suntrust, Response to Chairwoman Waters' and Subcommittee Chair Beatty's request for Diversity Data (July 11, 2019).

³⁴ BB&T DEF14A Filing at <https://www.sec.gov/Archives/edgar/data/92230/000119312519079571/d686788ddef14a.htm> and BB&T board of directors website page at <https://bbt.investorroom.com/board-of-directors>.

³⁵ Suntrust has 11 total board members (2 women, 3 minorities, 4 total diverse candidates for the new board). BB&T has 15 total board members (5 females, 3 minorities, 7 total diverse candidates for the new board) The total number includes counting for candidates who are both a woman and a minority.

³⁶ House Financial Services Committee hearing entitled, “Diversity in the Boardroom: Examining Proposals to Increase the Diversity of America's Boards,” June 20, 2019, <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403834>.