OCC & FDIC Propose Policy Changes To Enhance M&A Transparency

OCC regulatory FDIC industry update Mergers and Acquisitions

Summary: The OCC and FDIC have each proposed rules to enhance transparency around their processes of reviewing M&A transactions under the Bank Merger Act. We summarize the details of each agency's proposal and provide resources to review and comment on the suggested changes.

One of Abraham Lincoln's reasons for wanting to create a national banking system was to introduce a national currency. The thousands of types of paper money being printed were prone to counterfeiting and difficult to assign value to outside their local economy, leading to difficulties for businesses. In 1863, the national banking system, with "Greenbacks" issued by nationally chartered banks, was born — and the Office of the Comptroller of the Currency (OCC) was created to regulate and supervise the system.

Flash forward a century and a half — the OCC has proposed a rule to enhance transparency around its process of reviewing transactions under the Bank Merger Act, amid increasingly vocal criticism from the industry and other stakeholders that the process is too opaque. The OCC's intent is to expedite worthy deals while helping financial institutions avoid ones that could hit regulatory roadblocks, Acting Comptroller Michael J. Hsu told Reuters.

The OCC's Proposal

"You have two risks with mergers: One risk is that we approve too many mergers and therefore we're approving bad mergers," Hsu said. "The other risk is we approve too few mergers and therefore there are good mergers that should happen that aren't. The purpose of being transparent is to encourage more accuracy on both ends." Hsu added that there are three different categories of M&A deals the OCC assesses: those with significant deficiencies, those that are straightforward due to the acquiring bank's soundness and reputation, and others that are somewhere in between those two scenarios. The OCC's proposed policy changes would delineate the differences between these categories and how they are assessed.

The OCC is proposing two substantive changes to how it reviews deals:

1. **Remove provisions related to expedited review.** The proposed rule would eliminate the possibility that merger applications would be deemed approved solely by the passage of time. Under a rule adopted by the OCC in 1996, certain merger applications are deemed approved by the OCC on the 15th day after the close of the comment period unless the OCC takes action to remove the filing from expedited processing. The OCC wants to remove that, "reflecting our view that bank mergers are significant corporate transactions that require the OCC to make a decision," Hsu said in a recent speech. The proposed rule would also remove the OCC's streamlined business combination application that also includes an assumption of another institution's deposits.
2. **Outline general principles in reviewing deals.** The OCC is also proposing a policy statement that would outline the general principles the agency uses in its review of applications under the Bank Merger Act and the OCC's consideration of the financial stability, financial and managerial resources and future prospects,

and convenience and needs factors. The policy statement would also discuss the criteria informing the OCC's decision on whether to hold a public meeting on an application subject to the Bank Merger Act.

The FDIC's Proposal

In response to the rapidly changing landscape of the financial industry, the FDIC is also reviewing its role in the M&A approval process, under the Bank Merger Act. Their proposed Statement of Policy from March 2024 aims to modernize and clarify the evaluation process, considering factors such as competition, financial stability, and community needs.

FDIC Chairman Martin J. Gruenberg made a statement summarizing the role of the following five factors in driving the potential policy change:

1. **Minimizing Monopolization.** The proposed changes would include considerations to evaluate mergers with a focus on maintaining a competitive banking environment, ensuring consumers have meaningful choices. This includes concentration not only in deposits, but also in specific products or customer segments in any US region. The only exception would be if the rejection of the deal meant the failure of an insured institution.
2. **Financial Resources and Managerial Capability.** The proposal would require resulting institutions to demonstrate sound financial performance and managerial capability. The FDIC would evaluate the management team's ability to administer the institution safely, including factors like succession planning and responsiveness to regulatory recommendations.
3. **Combatting Money Laundering Activities.** The proposal outlines considerations for assessing effectiveness in combating money laundering, ensuring merged institutions have robust measures in place to address this risk.
4. **Community Convenience and Needs.** The proposal stresses the importance of mergers benefiting the community served, such as through increased access to services or reduced fees. The FDIC would consider factors like branch expansions and compliance with consumer protection requirements.
5. **Risk To US Banking & Financial System.** Considering the impact of the Dodd-Frank Act on the Bank Merger Act, the FDIC's review of M&A deals would include a statutory risk factor regarding the stability of US banking and the financial system. The FDIC would evaluate this factor focusing on entity size, substitute providers' availability, interconnectedness, system complexity contribution, and cross-border activities. Institutions with over $100B in assets merit additional scrutiny due to potential stability risks, emphasized by 2023 bank failures.

Although both proposals detail the review process for bank mergers, there are differences in the perspective of each agency on the topic. While the commenting period has closed for the OCC's proposals, the FDIC's proposed changes are available for comment until May 19, 2024. As the proposed rules develop and enter review by their respective agencies, we'll keep you informed of any updates that could affect your institution, should you choose to enter into any M&A deals.

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ECONOMY & RATES

Rates As Of: 04/16/2024 06:25AM (GMT-0700)

Treasury	Yields	MTD Chg	YTD Chg
3M	5.45	-0.01	0.05
6M	5.38	0.00	0.12
1Y	5.17	0.16	0.41
2Y	4.96	0.34	0.71
5Y	4.69	0.48	0.84
10Y	4.68	0.48	0.80
30Y	4.79	0.44	0.76

FF Market	FF Disc	IORB
5.33	5.50	5.40
SOFR	**Prime**	**OBFR**
5.32	8.50	5.32