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WHITE PAPER

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Bank Mergers: Managing Regulatory Issues and Termination Risks

Mergers and acquisitions ("M&A") of bank holding companies ("BHCs") and banks are subject to lengthy and sometimes unpredictable regulatory scrutiny and application processing between signing and closing. Bank M&A applications are subject to numerous regulatory risks, including preexisting conditions that are unknown or whose importance to the process is underestimated when the deal is signed, changes in the merging parties' businesses, changes in regulatory views or policies, and new regulatory examinations or findings. Market, economic, and credit conditions, as well as the parties' balance sheets, performance, and people can change materially while regulatory applications are being processed. All risks, including potential losses of the target's customers and employees to competitors, increase the longer the regulatory process continues.

Various bank M&A transactions have been significantly delayed, terminated or become subject to possible termination in recent years, a trend that appears to be growing. This *White Paper* discusses:

- Bank M&A regulatory approval processes;
- Case studies of recent bank M&A proposals that have been significantly delayed or terminated due to supervisory issues; and
- Anticipating, managing, and adjusting to regulatory delays.

REGULATORY PROCESS OVERVIEW

Most bank M&A involves mergers of BHCs and their subsidiary banks. The Board of Governors of the Federal Reserve System or its delegees ("Federal Reserve") evaluate and act on BHC M&A pursuant to the Bank Holding Company Act of 1956 ("BHC Act"), Section 3(a). New BHC activities to be conducted as a result of a proposed BHC merger also require Federal Reserve approval, generally under BHC Act, Section 4(c)(8), and other approvals or waivers also may be required. Mergers of banks require approvals from the resulting bank's primary federal regulator under Section 18(c) of the Federal Deposit Insurance Act ("Bank Merger Act" or "BMA") and, in the case of state banks, approval by their state regulator.

Multiple applications and regulatory agencies with different processing procedures, as well as multiple internal review processes within each regulator, complicate and can delay the process. Clear, complete, and consistent applications and pre-filing and continuing discussions with the applicable regulators, as well as prompt, complete responses to regulatory questions and requests for additional information, should expedite processing. Unless all applications are approved without materially adverse or burdensome conditions, the deal may fail.

The subsidiary bank mergers can be delayed until after the BHC merger to accommodate systems conversions, but it is unlikely that the parent BHC merger should close until the regulatory approvals of the subsidiary merger are received or assured. Sometimes, the resulting bank's primary regulators do not want to act until the Federal Reserve acts on the BHC applications. The resulting bank's regulator and the Federal Reserve may want to approve the BHC and subsidiary bank transactions almost simultaneously.

The BHC Act requires the Federal Reserve to consider:

- The merger's likely effects on competition;
- The convenience and needs of the communities to be served, including the parties' Community Reinvestment Act ("CRA") performance;
- The financial and managerial resources, including the competence, experience, and integrity of the officers, directors, and principal shareholders of the buyer company and its subsidiary bank;
- The future prospects of the companies and banks involved;
- The effectiveness of the company's policies to combat money laundering, including in overseas branches;
- The extent to which the proposal would result in greater or more concentrated risks to the stability of the United States banking or financial system; and
- If applicable, whether the transaction meets state and federal interstate merger requirements.[1]

Bank-to-bank mergers are considered under the Bank Merger Act's generally similar criteria. Inadequate performance under one factor, such as consumer or anti-money laundering compliance, can adversely affect the regulators' views of management and other factors.

M&A applications are subject to comment from the Department of Justice ("DoJ"), other regulators, and the public.

The public has an opportunity to comment, and to protest bank M&A applications, including BHC Act, Section 4(c)(8) proposals. Protests are treated seriously by the Federal Reserve and other bank regulators, and the Federal Reserve has a "low bar" to consider protests as substantive. Public comment and protests can significantly delay regulatory approval, and they should be expected in larger transactions.

FEDERAL RESERVE BHC ACT PROCESS

The Federal Reserve published SR 14-2 (Feb. 24, 2014) to enhance transparency with respect to applications and notices that "may not satisfy statutory requirements . . . or otherwise raise supervisory or regulatory concerns."

Almost no bank M&A applications are denied. Instead, these are withdrawn by the applicants to avoid formal denial, further delay, and adverse publicity, or as a result of the proposal being terminated for other reasons.

During the 2009–2012 Credit Crisis, SR 14-2 reported that approximately 10 percent of 7,000 applications and notices[2] were withdrawn. The Federal Reserve estimates that at least one-third were withdrawn due to significant issues that would have resulted in Federal Reserve staff recommending withdrawal. This period also resulted in more processing by the

Reserve Banks and Federal Reserve Board staff jointly, with fewer applications approved by the Reserve Banks under delegated authority.

SR 14-2 highlights reasons for withdrawals, which track the statutory factors, including:

- Less than satisfactory regulatory ratings or enforcement actions;
- Safety and soundness issues;
- Consumer compliance and CRA;
- Financial factors, including *pro forma* capital not commensurate with risks or not resulting in a "well-capitalized" combined organization, the resulting BHC considered an inadequate source of strength to its depository subsidiaries, and excessive acquisition debt;
- Inadequate business plan;
- Anti-money laundering and Bank Secrecy Act ("AML/BSA") compliance issues; and
- Adverse public comments.

The Federal Reserve expects applicants to have resolved their outstanding substantive supervisory issues prior to filing a merger application.

After more than three years, the Federal Reserve approved the merger of M&T Bank Corporation ("M&T") and Hudson City Bancorp, Inc. ("Hudson City") in an order dated September 30, 2015 ("M&T/Hudson City Order"). The M&T/Hudson City Order applied SR Letter 14-2 and announced the Federal Reserve's policy on applications where supervisory issues arise during the pendency of application:

> The Board expects that a banking organization will resolve all material weaknesses identified by examiners before applying to engage in expansionary activity. See, e.g., SR Letters 14-2 and 13-7. . . . M&T's issues largely arose during processing of this application, and the Board took the highly unusual step of permitting the case to pend while M&T addressed its weaknesses. The Board does not expect to take such action in future cases. Rather, in the future, if issues arise during processing of an application, the Board expects that a banking organization will withdraw its application pending resolution of any supervisory concerns.

Withdrawal of an application restarts all processing times and allows further public comment.

When issues are not addressed pre-filing, approval timing can extend past the transaction's outside termination date or "drop-dead" date, or to the point where the regulators or the parties determine that the M&A applications should be withdrawn and/or the transaction terminated.

During 2012 through June 30, 2016, M&A proposals to the Federal Reserve, including simple BHC formations, ranged between 190 to 279 annually. Withdrawn proposals ranged between 15 percent and 23 percent of total M&A proposals during these years. Average processing times ranged between 52 and 60 days. Applications receiving adverse public comment, often the largest transactions, ranged from 3 percent to 6 percent during this period. Adverse public comments caused processing times to range from 203 days to 297 days and often significantly increased the time and costs of obtaining regulatory approval.

CASE STUDIES

M&T–Hudson City

The M&T/Hudson City cash and stock merger transaction was announced on August 27, 2012, and closed on November 1, 2015. The merger agreement contained customary termination provisions in which either party could terminate the deal, if:

- The merger was denied by final and nonappealable order or any regulator issued a final and nonappealable order, injunction, or decree permanently enjoining or otherwise prohibiting or making illegal the consummation of the transactions; or
- The merger shall not have been consummated on or before the first anniversary of the execution of the merger agreement, unless the failure of the closing to occur by such date was due to the failure of the party seeking to terminate this agreement to perform or observe the covenants and agreements of such party set forth in this agreement.

During the Federal Reserve's processing of the application, bank examiners found "significant weaknesses" in M&T's risk management, specifically issues in its AML/BSA compliance programs, and also identified weaknesses in its consumer compliance programs. The Federal Reserve agreed to postpone its review of the merger application until M&T remedied these issues and bolstered its internal controls. Hudson City also had fair lending and mortgage lending discrimination issues discovered during a March 2014 Consumer Financial Protection Bureau ("CFPB") examination. Hudson City settled the complaint in Consent Order, *CFPB v. Hudson City Savings Bank*, Case No 15-706, (D.N.J. Nov. 4, 2015). These issues were not known prior to the merger agreement.

M&T and Hudson City amended their merger agreement four times to extend the termination dates due to regulatory delays resulting from the AML/BSA issues. These amendments also amended certain customary terms restricting Hudson City's business prior to closing.

During the more than three years that the transaction was pending, Hudson City's deposits shrank approximately 28 percent from approximately $25 billion reported at June 30, 2012, to about $18 billion reported at September 30, 2015, and loans declined from approximately $28 billion to about $19 billion (32 percent) between those same reporting dates. The aggregate market value of the deal increased approximately 41 percent from $3.7 billion at the deal's announcement to approximately $5.2 billion at the November 1, 2015, closing, primarily reflecting increases in the market price of M&T common stock.

New York Community Bancorp–Astoria Financial Corporation

New York Community Bancorp, Inc. ("NYCB") and Astoria Financial Corporation ("Astoria") agreed to a $2 billion cash and stock merger in October 2015, which they anticipated closing in the fourth quarter of 2016. The deal was subject to receipt of all necessary regulatory approvals, and that no approval impose any condition that would have a materially adverse effect on NYCB following the merger. The merger agreement's termination provisions were customary, and provided a termination date of December 16, 2016.

The parties disclosed on November 9, 2016, that the deal would not receive regulatory approval by the end of 2016. On December 20, 2016, the parties announced that their respective boards of directors had agreed to terminate their merger agreement. No specific reasons were provided, but speculation centered on supervisory issues, including that the Astoria acquisition would increase NYCB's size above $50 billion and subject it to additional regulation as a large institution. NYCB has stated that it continues to seek acquisitions that would result in its assets exceeding $50 billion.

BancorpSouth–Ouachita and Central Community

In January 2014, BancorpSouth, Inc. ("BancorpSouth") announced merger agreements with Ouachita Bancshares Corp. and its bank subsidiary (collectively, "Ouachita") and Central Community Corporation and its bank subsidiary (collectively, "Central Community"), where the targets and their bank subsidiaries would be merged with and into BancorpSouth and its bank subsidiary, respectively. The Ouachita merger agreement ("Ouachita Agreement") and the Central Community merger agreement ("Central Community Agreement" and, together with the Ouachita Agreement, "BancorpSouth Agreements") provided that BancorpSouth would deliver common stock and cash, subject to various conditions and potential adjustments, having an aggregate value of approximately $115 million and $211 million, respectively.

The BancorpSouth Agreements had outside termination dates based on regulatory approvals being obtained within 180 days, with closings within 210 days.

BancorpSouth submitted its BHC Act and Bank Merger Act applications early in March 2014 to the Federal Reserve and FDIC. Investigations in 2014 by the DoJ and the CFPB into BancorpSouth's lending practices had determined that BancorpSouth's mortgage lending practices violated the fair lending laws. The applications triggered negative public comments regarding BancorpSouth's mortgage lending practices.

The BancorpSouth Agreements were amended on July 21, 2014, to extend the termination dates to June 30, 2015. The amendments were similar, and included:

- Increasing the merger's cash component;
- Providing the targets termination rights if (i) BancorpSouth's common stock was 20–25 percent less than the stock price at the time of the Amendment, or (ii) BancorpSouth did not have a merger application on file with the Federal Reserve or the FDIC on or after February 28, 2015; and
- Requiring BancorpSouth to pay the targets (i) up to $250,000 of documented expenses incurred in connection with the merger and (ii) a reverse break-up fee of $750,000 upon regulatory disapproval.

BancorpSouth withdrew its merger applications on August 1, 2014, but resubmitted these eight months later on March 7, 2015. On June 30, 2015, second amendments were made to BancorpSouth Agreements, which increased the minimum consideration payable by BancorpSouth and the minimum BancorpSouth stock price, in addition to increasing the reverse break-up fee to up to $1.25 million.

On June 29, 2016, BancorpSouth announced a consent order with the DoJ and the CFPB covering its alleged fair lending violations. Consent Order, *U.S. v. BancorpSouth Bank,* Case No. 1:16cv118 (N.D. Miss. Jul. 25, 2016). This was about $3 million less than the amount BancorpSouth had reserved earlier in 2016.

The DoJ/CFPB consent order had another unexpected effect. On August 11, 2016, the FDIC took the highly unusual step of retroactively downgrading the Bank's CRA rating from "Satisfactory" to "Needs to Improve," effective as of the 2013 CRA evaluation. Accordingly, BancorpSouth announced that it would be unable to obtain the necessary regulatory approvals for the Ouachita and Central Community mergers until its subsidiary bank's CRA rating was improved to at least "Satisfactory." The release indicated that the FDIC's next CRA was expected to begin later in 2016, with completion estimated in the first quarter of 2017. BancorpSouth withdrew its regulatory applications on October 17, 2016.

Further amendments to the BancorpSouth Agreements extended the termination dates, if closing did not occur on or before December 31, 2017 (or if all regulatory approvals have been received by December 31, 2017, then on or before February 28, 2018). The targets were permitted to terminate their respective agreements if (i) BancorpSouth Bank's CRA rating is not upgraded (or the Bank is notified by the FDIC that such rating will not be upgraded) to "Satisfactory" or better as a result of its next CRA examination; (ii) the BancorpSouth Bank's next CRA examination did not commence by March 30, 2017; (iii) BancorpSouth had not filed the regulatory applications necessary for the completion of the pending transactions by August 31, 2017; or (iv) any application for approval of the transactions filed by BancorpSouth after October 13, 2016, was denied or withdrawn at the request or recommendation of the applicable regulator.

The reverse termination fees payable by BancorpSouth were doubled in the case of Central Community, and in certain cases with Ouachita, tripled; and the reimbursement of deal expenses was doubled to $500,000 if BancorpSouth's merger application was disapproved or BancorpSouth did not receive a CRA rating upgrade. Pricing floors and the targets' minimum required loan loss allowances also were reduced.

Capital One–Acquisition of Cabela's Credit Card Portfolio

Bass Pro Group, LLC ("Bass Pro") agreed to acquire sporting goods retailer Cabela's Incorporated ("Cabela's") pursuant to a merger agreement dated October 3, 2016 ("Bass Pro Merger Agreement"). At the same time, a sale and purchase agreement among Cabela's and its subsidiary, World's Foremost Bank, Sidney, Nebraska ("Bank"), and Capital One, National Association ("Capital One"), was executed ("Bank Purchase Agreement"). Capital One agreed to purchase and assume ("P&A") substantially all of the Bank's assets and liabilities, including deposits, whereupon the Bank will liquidate. The P&A requires OCC approval under the Bank Merger Act.

The Bank Purchase Agreement and the Bass Pro Merger Agreement do not provide Cabela's or Bass Pro any termination fees or other payments if the merger or the P&A do not close due to regulatory delays of the P&A application or denial of Capital One's Application to the OCC.

The Bass Pro Merger Agreement required the sale of the Bank's business to be completed at the same time as the closing of the Bass Pro/Cabela's merger. Cabela's was required to promptly notify Bass Pro if it became aware of any actual or potential failure or delay in obtaining any required regulatory approvals. Unless extended, both the Bass Pro Merger Agreement and the Bank Purchase Agreement can be terminated if the transactions have not been completed by October 3, 2017.

Unlike M&T/Hudson City, where AML/BSA issues arose after merger applications were filed, the OCC and Capital One had entered into a Stipulation and Consent on July 10, 2015, to the Issuance of a Consent Order and a related Consent Cease and Desist Order (collectively, "Consent Order"). The Consent Order is broad and directs Capital One to remediate various of its AML/BSA risk management and other practices. Capital One had devoted considerable time and resources to resolving these issues prior to entering into the Bank Purchase Agreement.

According to the *American Banker*, a Capital One spokesman described the Consent Order as ". . . [emanating] from prior banking relationships with certain check cashing service providers in the New York metro area, a business we made the decision to exit in 2014." *American Banker*, "Capital One hit with Consent Order on Former Check-Cashing Business" (August 5, 2015). *See also, American Banker*, "Fifth Third, Capital One Cut Off Payday Lenders" (April 16, 2014) and *American Banker*, "DOJ, Treasury join probe of Capital One's Anti-Laundering program" (February 24, 2015).

Cabela's December 29, 2016, Form 8-K report stated that the P&A approval would be delayed:

> Since the execution of the Bank Purchase Agreement, [Cabela's] and Capital One have engaged in numerous conversations. . . . During the course of some of those discussions, Capital One informed [Cabela's] . . . that while it expects that the transactions under the Bank Purchase Agreement will be approved by the OCC under the BMA, such approval is not currently likely to occur prior to October 3, 2017, the date after which any of Parent, the Company or Capital One would have the right to terminate the Merger Agreement or Bank Purchase Agreement, as applicable.

In comparison, even before the AML/BSA issues arose, the regulatory application process lasted eight months in Capital One's much larger acquisition of approximately $29 billion of credit cards and other assets from HSBC in 2012.

The Consent Order expressly confirmed that Capital One remained an "eligible Bank" for corporate applications and was not a "troubled bank." It is likely these were included at Capital One's insistence in an effort to preserve its ability to enter into M&A transactions. These provisions, however, apparently are not guarantees that any specific expansion applications will not be subject to regulatory delays due to the Consent Order or otherwise.

Capital One/Cabela's demonstrates the uncertainty and sensitivity of the bank M&A regulatory approval process. The Consent Order resulted, apparently, from businesses that Capital One had terminated about a year earlier and, apparently, is interfering with the current P&A application, despite Capital One's efforts and progress.

Capital One clarified the situation in its January 24, 2017, earnings call, where it stated that the OCC was not expected to approve the Cabela's transaction before the merger agreement's October 3, 2017, outside termination date and that the transaction could not be restructured to avoid the Bank Merger Act approval process. The OCC appears to be taking a view similar to the Federal Reserve's processing policy for applicants with supervisory issues, and Capital One expected its application to be withdrawn or denied around the end of January.

Capital One's Bank Merger Act application was withdrawn on January 28, 2017. At a bank conference on February 7, Capital One reaffirmed its enthusiasm for the Cabela's transaction and indicated that Cabela's had consented to the withdrawal and later refilling of Capital One's application to the OCC. Based on its earlier statements, Capital One is not expected to refile its application until it has complied with its OCC Consent Order.

Investors Bancorp Inc.–Bank of Princeton

Investors Bancorp Inc. ("Investors") agreed to acquire Bank of Princeton ("Princeton") in a cash and stock transaction announced May 3, 2016, which had an initial value of approximately $154 million, according to *SNL*. On August 12, 2016, Investors announced that its subsidiary bank ("Investors Bank") had entered into an informal agreement ("Informal Agreement") with the FDIC and the New Jersey Department of

Banking and Insurance requiring Investors Bank to implement improved internal controls related to AML/BSA, validate its automated AML/BSA compliance system, review certain transactions and accounts for AML/BSA compliance, and establish a Board compliance committee. Investors believed it could achieve "substantial compliance" with the Informal Agreement and obtain regulatory approval of the Princeton acquisition.

Investors announced the mutual termination of the transaction on January 24, 2017, since it and Princeton had concluded that the transaction would not be approved prior to the merger agreement's March 31, 2017, deadline. The Mutual Termination Agreement reconfirmed the parties' confidentiality obligations, restricted certain solicitations by Investors Bank of Princeton customers, and had a mutual non-disparagement provision.

Other

Similarly, other potential M&A proposals have been abandoned after preliminary regulatory discussions or new developments, including as a result of:

- Discovery, self-correction, and voluntary reporting of consumer law violations of immaterial amounts; and
- Letters from the DoJ threatening suit and seeking settlement of alleged fair lending law violations, notwithstanding recent clean regulatory examinations. In one case, the DoJ withdrew its letter, but well after the transaction was scuttled.

CONCLUSIONS

The case studies illustrate how the interplay between regulatory approvals and outside termination dates can significantly affect deal terms and outcomes. For some, like the NYCB/Astoria deal, regulatory challenges lead to a mutual termination of the deal. Still, even when the parties are committed to the merger, like M&T/Hudson City and BancorpSouth, it can take significant commitments of time and money from the parties to surmount regulatory obstacles, and an ability to extend timelines for long periods.

Bank M&A is strategic for both the buyer and the seller and, in many cases, essential to the seller. Existing supervisory issues should be resolved as much as possible before entry into a M&A transaction. Regulatory scrutiny through the merger process may lead to new issues. If supervisory issues exist at the target, the buyer has to demonstrate its capacity to resolve these consistent with its merger integration plan. Delays have economic effects on the merging parties and their shareholders and impede the acquirer implementing its strategic plans and making other potential acquisitions, which it may lose. While regulatory surprises may occur, the acquisition process should be planned, diligenced, documented, and executed carefully to minimize the adverse, and potentially lethal, effects of delays. Items to consider include:

Planning and Diligence

- A strategic plan should be adopted, which includes M&A activity.
- Buyers and sellers should each consider carefully their likely merger counterparties as part of their planning process.
- M&A teams, as well as merger integration teams, should be established.
- Compliance, legal, and the M&A teams should coordinate preparedness to engage in M&A.
- Both buyers and sellers should perform self-assessments as to their own risks so that they may deal with these, resolve issues, and prevent regulatory enforcement or other actions, as well as to maximize company M&A opportunities. Are there open supervisory issues or incomplete performance of supervisory agreements that make it prudent to not pursue M&A opportunities until these are resolved?
- Sellers should anticipate buyer diligence and use those questions as part of their self-assessments. A cleaner bank will sell more quickly at a higher price than one that has issues to be resolved and that poses regulatory and other risks.
- Will the transaction push the buyer over any asset thresholds, such as $10 billion or $50 billion, which will have material, financial, and regulatory consequences? Is the buyer prepared for these, and to integrate an M&A target?

Diligence

- Diligence should be carefully conducted by each party to the transaction. Many regulatory risks that may confront a buyer in the application process should be discernible by a seller upon appropriate diligence.
- The parties should have candid conversations regarding diligence items and potential regulatory hurdles.
- AML/BSA, CRA, and Fair Lending Laws are regulatory hot buttons with serious strategic consequences. These issues could prevent or delay M&A activity by even the most respected institutions for extended periods. If any of these issues exist or are likely to arise, they should be dealt with very seriously by the parties in their initial discussions.[3] Regulators often view enforcement actions as having been satisfied only when compliance is complete, which may include validation and confirmation by one or more regulatory examinations. Substantial compliance may be insufficient for approval of a M&A proposal.
- Buyers and sellers should be regularly involved in discussions with their regulators before deals arise to anticipate regulatory issues, and also to take steps to avoid and minimize issues that could derail a transaction.
- When a transaction arises, conferences with the regulators should be held prior to negotiation of the transaction documents.

Documenting Transactions

- Representations, warranties, and covenants should be tailored to the specific facts of the transaction and the parties.
- Outside termination dates to complete bank M&A are generally 12 months. Any longer sends the wrong signals to the markets, the parties, and the regulators. A shorter time may be overly optimistic and not give the parties enough time to complete the process, especially in larger transactions, which may be protested.
- In the event of regulatory delay, typical merger covenants on the seller may have to be relaxed to preserve the target's business and people. Examples include granting retention benefits; reevaluating severance, bonus, and normal equity awards; amending deferred compensation plans; and exercises of awards. The case studies above describe various other provisions that might be considered.
- It is likely that more sellers, especially in smaller transactions, will seek reverse break-up fees and the ability to terminate based upon regulatory inaction or adverse actions, at earlier dates, such as occurred in the BancorpSouth acquisitions.
- Termination provisions based on "final nonappealable orders" should be reconsidered as it is ambiguous in the context of regulatory actions.
- No amount of break-up fees or expense reimbursement can fully compensate either party sufficiently for significant delays.

Execution

- Regular communications with the regulators regarding the application process are useful.
- Identify and respond promptly and completely as issues and regulatory requests for additional information arise, whether before or as part of the application process.
- When announcing delays, extensions and alternatives should be provided, to the extent possible, and communications with shareholders and constituents should be prompt, and as clear as possible given regulatory restraints on discussing examination issues and other confidential supervisory information.
- If delays are anticipated or occur, the parties should be prepared to decide whether or not to proceed.
- In some cases, the regulatory process may take longer than the merging parties or the regulators are willing to accept, and termination, or temporary withdrawal of the applications, may be the best result.
- If the parties believe the transaction has a reasonable chance of success, preplanned actions should be implemented to: (i) continue integration planning, with updated timing; (ii) ensure the stability of the personnel at the target, including retention bonuses and normal pay increases and awards; (iii) preserve customer relations, especially at the target; (iv) take advantage of securities portfolio restructurings and other actions that are mutually agreeable, without giving the buyer control of the seller; and (v) continue capital planning, with plans for both a successful and an unsuccessful merger.
- Extensions of outside termination dates should be based upon the issues and the likely resolution. Where a further regulatory examination is required, especially to satisfy

AML/BSA, CRA, or safety and soundness issues, and to verify remediation of previously identified problems, the timelines are difficult to estimate, but should be carefully considered with the applicable regulatory agencies. The regulatory agencies' examination schedules are likely to drive the process, not the parties' timing needs.

Parties that anticipate and are prepared for bumps in the M&A regulatory process will be most successful. Those who are not proactive will have a more difficult time finding attractive M&A opportunities and in executing transactions.

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ENDNOTE

1 *See* Federal Reserve Regulation Y § 225.13. The Federal Reserve will also consider whether the applicant will provide the Federal Reserve sufficient information in the future on its activities and affiliates, or in the case of a foreign organization, whether it is subject to comprehensive, consolidated supervision in its home country.

2 This included all notices and applications, not just Bank M&A proposals.

3 *See* Stovall, *SNL*, "BSA remains large stumbling block in bank M&A" (Feb. 8, 2017); Davis, *American Banker*, "Slideshow—the anti-money laundering penalty box" (Jan. 13, 2017). *See also Jones Day Commentary,* "Financial Crimes Enforcement Network Releases FAQs on Diligence Procedures for Beneficial Owners of Accounts" (Aug. 2016).