

December 28, 2017

Contested Bank Acquisition Application

In a recent Bank Holding Company Act (“BHC Act”) decision, the Board of Governors of the Federal Reserve System (the “Board”) again indicated that a target institution’s opposition would not prevent approval of an application. *NATCOM Bancshares, Inc.*, FRB Order No. 2017-37 (Dec. 18, 2017).

NATCOM had filed an application under Section 3 of the BHC Act to acquire 49% of the voting shares of Republic Bancshares.¹ Republic’s management opposed the application on several grounds. The Board reiterated its prior position that it will apply the same BHC Act criteria to all proposals, irrespective of whether the management of the target institution opposed the transaction. The Board approved the application subject to “commitments made to the Board”, but these commitments were not disclosed in the Order.

The Board noted and dismissed several arguments that Republic had made in opposition. These included: (i) Republic’s loss of its ability to be treated as an S corporation and resultant shareholder litigation (because “[t]hose matters do not fall within the scope of statutory factors the Board is required to consider”); (ii) Republic’s claim, by implication, that the transaction would negatively impact Republic’s CRA performance (because NATCOM committed to no changes in Republic’s programs and NATCOM had an “outstanding” CRA rating); and (iii) pending litigation by Republic challenging the approval of the application by the Minnesota Department of Commerce (because Federal Reserve action “would not interfere with the court’s ability to resolve the pending litigation”). The Board did not directly address the question of whether Republic’s management would be weakened or disrupted by potential conflict with a large minority shareholder.

Although the Board’s decision is limited to the specific facts of this matter, it seemingly reaffirms the Board’s position that it is not hesitant to approve applications in contested transactions. In situations where the target institution is state-chartered, however, the state authorities may give more weight to management’s objections. In this case, the Minnesota Department of Commerce originally denied

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NATCOM's application. The subsequent approval, after a rehearing, was subject to a number of "passivity" type commitments (such as no interlocks).

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ENDNOTE

- ¹ An estate owned 51% of Republic's stock and a family member owned the remaining 49% that was sold to NATCOM.

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