

January 18, 2023

Federal Reserve and OCC Consideration of Bank Merger Proposals

Federal Reserve's and OCC's Recent Approval Orders for Larger Bank Mergers Demonstrate Adherence to the Existing Statutory Review Framework

The Federal Reserve Board on Tuesday approved the application submitted under Section 3 of the Bank Holding Company Act of 1956 (the "BHC Act") by Bank of Montreal ("BMO") and BMO Financial Corp. to acquire BancWest Holding Inc. ("BancWest"), a subsidiary of BNP Paribas S.A. and direct parent of Bank of the West, a California state-chartered nonmember bank with approximately \$92 billion in assets. The Office of the Comptroller of the Currency ("OCC") on Tuesday also approved the application of BMO Harris Bank, N.A., a national bank with approximately \$165 billion in assets ("BHBNA"), to merge with Bank of the West following the completion of BMO's acquisition of BancWest, with BHBNA the surviving bank in the merger.¹

Previously, on October 14, 2022, the Federal Reserve Board approved U.S. Bancorp's ("USB") acquisition of MUFG Union Bank, N.A. ("MUFG"), a national bank with approximately \$125 billion in assets. Each of these approval orders demonstrates that, even for large bank mergers, the Federal Reserve and OCC remain willing to evaluate and approve merger proposals under the existing statutory review factors they are required to consider when evaluating a proposed merger under the BHC Act and Section 18(c) of the Federal Deposit Insurance Act (the "Bank Merger Act").

Following the acquisition by BMO and BMO Financial Corp., the 23rd largest U.S. insured depository organization, of BancWest, BMO Financial Corp. will be the 15th largest U.S. insured depository organization. Following the acquisition by USB, previously the 8th largest U.S. insured depository organization, of MUFG, USB became the 7th largest U.S. insured depository organization.

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Both the Federal Reserve and OCC are required under Section 3 of the BHC Act and under the Bank Merger Act, respectively, to consider specific factors when evaluating merger proposals, including the financial and managerial resources of the acquirer and combined company, the convenience and needs of the communities served by the merging organizations, the competitive effects of the proposed transaction and the effects of the proposed transaction on the stability of the U.S. banking or financial system.

The Federal Reserve and OCC have each developed an approach for evaluating these factors in their respective regulations implementing the BHC Act, 12 C.F.R. Part 225, and the Bank Merger Act, 12 C.F.R. Section 5.33, and in numerous prior orders considering merger proposals. Each of the Federal Reserve's and OCC's analysis of the BMO merger proposal, as well as their consideration of the USB merger proposal, as reflected in the Federal Reserve and OCC approval orders (see the Federal Reserve BMO approval order [here](#) and the OCC BMO order [here](#), as well as the Federal Reserve USB approval order [here](#) and the OCC USB order [here](#)), was consistent with the Federal Reserve's and OCC's longstanding approach of applying the factors enumerated under Section 3 of the BHC Act and the Bank Merger Act.

The Federal Reserve's and OCC's approvals of BMO's proposal do not impose any conditions on BMO's ability to complete the transaction.

We believe that the approval orders issued yesterday authorizing BMO's acquisition of BancWest, including Bank of the West, combined with the Federal Reserve's and OCC's approval of USB's recently completed acquisition of MUFG, demonstrate the willingness of the Federal Reserve and OCC to approve proposed merger transactions, even for larger organizations, that satisfy the existing statutory requirements set forth in the BHC Act and Bank Merger Act, respectively.

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ENDNOTE

¹ Sullivan & Cromwell advised BNP Paribas S.A. on its sale of Bank of the West to BMO and advised MUFG on its sale of MUFG Union Bank to U.S. Bancorp, which was completed on December 1, 2022.

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