New Data on Federal Reserve Merger and Acquisition Application Approval Times

The Federal Reserve’s Most Recent Semiannual Report Provides Insight Into the Bank M&A Application Process

BACKGROUND

On September 24, 2015, the Board of Governors of the Federal Reserve System (the “Federal Reserve”) released its third Semiannual Report on Banking Applications Activity (the “Semiannual Report”),¹ which includes aggregate summary statistics regarding the disposition of bank merger and acquisition (“M&A”) proposals by the Federal Reserve in the first half of 2015, as well as historical approval data. Further information regarding the background behind the Semiannual Report can be found in our prior Memorandum to Clients here.

We have conducted our own analysis of Federal Reserve M&A applications approval data to provide additional insight into the approval process and outcomes.²

APPLICATION APPROVAL TIMING

Based on information in the Semiannual Report and our own analysis of Federal Reserve applications approval data, since 2010, the average time between filing an M&A application with the Federal Reserve and approval has been about 65 days.

For many financial institutions that have been involved in applications subject to review by the Federal Reserve, this statistic will seem quite low. The reason is the sharp dichotomy between (i) the average processing time of about 56 days for the approximately 93% of all Federal Reserve M&A approvals decided by the relevant Federal Reserve Bank under delegated authority and (ii) the average processing time of about 187 days for the remaining applications that are decided by the Federal Reserve Board itself (“Board Action”).³ The latter category includes large or complex transactions, transactions that raise
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novel or policy issues and transactions that receive adverse public comments. In particular, the average processing time in the case of M&A applications receiving adverse public comments has been slightly over 200 days. The percentage of all M&A applications receiving adverse public comments, however, remains relatively low (about 5%). In addition, in our experience, transactions involving foreign banking organizations are usually decided by Board Action and, therefore, usually involve significant processing time.

Notwithstanding this substantial processing time for larger and higher-profile applications, there have recently been a number of notable approvals, including: PacWest-Square1, BCI-City National Bank of Florida, Banner-AmericanWest, CIT-OneWest, BB&T-Susquehanna, Sterling-Hudson Valley and BB&T-Bank of Kentucky. Of particular note is the approval for CIT Group Inc.’s acquisition of OneWest Bank, N.A., notwithstanding that the application received, apparently, more public comments than any other prior M&A application (at least in many years), involved a public meeting held by the Federal Reserve and the Office of the Comptroller of the Currency in Los Angeles and was the first transaction since the financial crisis in which two institutions with less than $50 billion in total consolidated assets combined to form an institution with greater than $50 billion in total consolidated assets.

Although the average processing times for M&A applications decided by Board Action have increased since 2010, when controlled for whether or not the application received adverse public comments, processing times peaked in 2013 and now appear to have returned to 2010 levels. This development is in spite of the fact that the Federal Reserve is receiving and processing a larger volume of such applications. The number of M&A applications submitted to the Federal Reserve in the first half of 2015 is up 18% compared to the first half of 2014.
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SHORTER APPROVAL TIMES FOR MIDDLE MARKET BANK M&A

The data and our own experience demonstrate that well-planned M&A transactions in the middle market can be approved relatively quickly. Since 2010, M&A transactions with an announced deal value between $250 million and $1 billion have been approved by the Federal Reserve, on average, in approximately 3 to 4 months. Given that in many cases the requisite shareholder approval(s) and transition planning for these transactions can take a number of months, the Federal Reserve approval process may not result in any delay to the desired closing date.

TAKEAWAYS FOR POTENTIAL ACQUIRORS AND SELLERS

Potential acquirors and sellers should recognize that, although the path to regulatory approval must be well-navigated and acquirors and sellers must be cognizant of both their and the counterparty’s regulatory posture (including compliance and community relationships), Federal Reserve approval is obtainable, even for relatively large, complex or protested mergers, within 6-12 months in the vast majority (over 90%) of cases. For bank M&A transactions in the middle market, approval times are likely to be significantly shorter.

* * *

ENDNOTES


2 In the Semiannual Report, “M&A proposals” include those in which the applicant seeks approval to acquire additional ownership interest in or to merge with another banking organization, as well as BHC and SLHC formations. Using our own data, we are able to narrow our analysis to “true” bank merger and acquisition transactions (excluding, for example, investment, conversion and similar transactions). For M&A applications, the Semiannual Report covers the period from January 1, 2011 to June 30, 2015. Our analysis covers the period from January 1, 2010 to September 25, 2015.

3 Further evidence of this dichotomy is derived from a median approval time of only about 41 days.

4 Two major applications that have not yet been decided are the long-delayed M&T-Hudson City application (M&T and Hudson City have announced that the Federal Reserve expects to act on the application by September 30, 2015) and the RBC-City National application.

5 $50 billion in total consolidated assets is the threshold for the application of the Federal Reserve’s enhanced prudential standards. See our prior Memorandum to Clients here https://sullcrom.com/enhanced-prudential-standards-for-large-us-bank-holding-companies-and-foreign-banking-organizations for further background.

6 Sullivan & Cromwell LLP acted as joint regulatory counsel to CIT and OneWest in connection with the transaction, including the applications with the Federal Reserve and the Office of the Comptroller of the Currency.

7 Announced deal values are based on data reported by SNL Financial.
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