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**Testimony
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**For
The U.S. House Financial Services Committee Hearing:**

The Next Megabank? Examining the Proposed Merger of SunTrust and BB&T

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Chair Waters, Ranking Member McHenry and honorable members of the committee: On behalf of more than 500,000 members and supporters of Public Citizen, we offer the following comments on the proposed merger of SunTrust and BB&T.

Most importantly, we commend the committee for holding this hearing. The financial crash of 2008 served as a painful lesson that the size of Wall Street firms represents not just an economic hazard but also a moral one. Knowing that their institution will likely be seen as “too-big-to-fail” and be bailed out by taxpayers in the case of failure, executives are encouraged to take excessive risks; smaller firms that won't be bailed out must remain prudent.

The question before the committee and before the financial regulators charged with approving this merger is whether this merger will spawn another too-big-to-fail bank.

Public Citizen believes that this question deserves careful consideration

Background

Since the courts and eventually Congress opened the way for interstate banking in the 1980s,¹ the number of banks has dropped precipitously. Further, the size of the largest banks has swollen to dangerous proportions. Four banks—JPMorgan, Bank of America, Wells Fargo, and Citigroup—now control nearly half of all deposits and assets in the banking sector. The failure of any of these institutions would undoubtedly cause systemic tremors that would jeopardize the financial stability of the nation and shock

¹ *Northeast Bancorp v Federal Reserve Board*, (1985) <https://www.oyez.org/cases/1984/84-363>

the economy. The 2008 Wall Street crash followed the bankruptcy of Lehman Brothers, which held about \$600 billion in assets.

Public Citizen believes that these mega-banks should be broken up. Our view is reflected in legislation supported by many members of Congress.² One obvious question with such break-up plans is the size below which a bank failure would not inevitably lead to systemic repercussions. The BB&T-SunTrust merger would create an institution with \$450 billion in assets. Is this size reasonable? Will the systemic risk created by this merger require a bailout should the firm become insolvent?

Congress formally provided for these considerations in Section 3(c)(7) of the Bank Holding Company Act. Specifically, the Federal Reserve Board (Board) must consider whether the proposed acquisition would result in greater or more concentrated risks to the stability of the U.S. banking or financial system.³ Federal regulators have never issued rules or guidance as to how this would be measured. Nor does the statute provide numerical instructions. The Board does list five factors:⁴

1. The size of the resulting banking organization;
2. The availability of substitute providers for any critical products and services offered by the resulting firm;
3. The interconnectedness of the resulting firm with the banking or financial system;
4. The extent of the cross-border activities of the resulting firm; and
5. The extent to which the resulting firm contributes to the complexity of the financial System.

Proposed Merger

The applicants assert that this transaction would “not materially increase systemic risk” to the financial sector. They claim instead that it will lead to a stronger regional bank that will be more competitive with existing rivals, that include the mega-banks that also operate in their markets.⁵ We believe that this assertion ignores the issue. The question is not whether a solvent firm would compete better, but whether an insolvent firm would spark systemic repercussions.

The applicants do acknowledge this question when they observe that “interwoven” in the analysis is the “relative degree of difficulty of resolving the resulting firm if it were to experience financial distress.”⁶

But when the applicants address each factor, they simply recite that the mega-banks are larger. For example, they state their share of national deposits would be 2.7 percent, whereas those of Citigroup is now 4.19 percent. We do not believe the Federal Reserve should take lightly the failure of a bank that stewards roughly \$1 out of every \$30 entrusted to banks and backed by federal deposit insurance. Were

² Sanders, *Sherman Introduce Legislation to Break up Too Big to Fail Institutions*, Press Release, SEN. BERNIE SANDERS (Oct. 3, 2018) <https://www.sanders.senate.gov/newsroom/press-releases/sanders-sherman-introduce-legislation-to-break-up-too-big-to-fail-financial-institutions>

³ 12 U.S.C. § 1842(c)(7)

⁴ See *Capital One Financial Corporation*, FRB Order No. 2012-2 (Feb. 14, 2012) (the “Capital One Order”). See also *FRB Order No. 2015-35* (Dec. 23, 2015); *CIT Group, Inc.*, FRB Order No. 2015-20 (July 19, 2015); *The PNC Financial Services Group, Inc.*, 98 Fed. Res. Bull. 16 (2012).

⁵ *Application to the Board of Governors of the Federal Reserve System by BB&T Corp and SunTrust Banks, Inc.* (March 8, 2019) https://thepremierfinancialinstitution.com/content/uploads/2019/03/BB&T-SunTrust-FRB-Application-Final_3379808_1.pdf

⁶ *Application to the Board of Governors of the Federal Reserve System by BB&T Corp and SunTrust Banks, Inc.* (March 8, 2019) https://thepremierfinancialinstitution.com/content/uploads/2019/03/BB&T-SunTrust-FRB-Application-Final_3379808_1.pdf

this firm to declare bankruptcy, this news would be significant in the Southeast where they operate and may lead to questions about other solvent banks in this market. A deposit run precipitated the arranged sale of Washington Mutual to JP Morgan, which held less than \$200 billion in deposits. That deposit run only reached \$16 billion before regulators stepped in with extraordinary measures.⁷ While many other troubles outside of Washington Mutual attended this firm's failure, it is possible that a SunTrust/BB&T failure might also take place amidst other tremors.

In 1984, the government bailed out Continental Illinois, noting that it was too big to fail. It held \$40 billion in assets. Even adjusting for inflation that would only be \$90 billion today, a fraction of the size of this proposed merger, let alone the \$1 trillion mega-banks.⁸

BB&T/SunTrust also attempts to minimize their assets by comparing them with the mega-banks. Using the most expansive accounting, this merger would lead to a firm with total exposures of \$508 billion. The applicants' only argument is that this is far below that of its larger rivals, such as JP Morgan, which the applicants say has exposures of \$3.3 trillion. Again, the applicants fail to actually demonstrate that insolvency of a merged institution would not cause systemic tremors.

We believe that this qualitative analysis based only on relativity should be bolstered by a more thorough analysis. Consequently, we applaud the Committee for holding this hearing and demanding a more serious analysis.

Beyond issues of systemic risk, we are also troubled by the likely reduction in providers of needed credit. The National Black Farmers Association opposes this merger, noting that the merged bank may be "less responsive to the needs of the local communities it serves."⁹

We believe that it is inevitable that the merged bank will reduce the number of branches and will terminate employees. The company cites "synergy" as a key business reason for the transaction, the industry term for accomplishing the same task with fewer inputs. The firm will even pay what it calls "synergy incentive awards" to senior executives.¹⁰

For these reasons, we are unable to support this merger.

At the same time, we are pleased to see that the banks have agreed to a \$60 billion community reinvestment plan led by the National Community Reinvestment Coalition. This program provides specific goals, including \$31 billion in mortgage lending to low- and moderate-income borrowers, nearly \$8 billion in new loans for small business, and \$17 billion for affordable housing development.¹¹

⁷ Jonathan Rose, *Old Fashioned Deposit Runs*, FEDERAL RESERVE (Nov. 18, 2015)
<https://www.federalreserve.gov/econresdata/feds/2015/files/2015111pap.pdf>

⁸ HISTORY OF THE EIGHTIES- LESSONS FOR THE FUTURE, VOLUME I: AN EXAMINATION OF THE BANKING CRISES OF THE 1980S AND EARLY 1990S, CHAPTER 7, (FDIC's Division of Research and Statistics, 1997)
<http://1.usa.gov/1OwIrrjZ>. For inflation data, see CPI Inflation Calculator, U.S. Bureau of Labor Statistics, <http://1.usa.gov/1R1XdIw> (converted 1984 dollars to 2015 dollars).

⁹ *Letter to Federal Regulators*, NATIONAL BLACK FARMERS ASSOCIATION (March 20, 2019)
<https://www.bfalaw.com/sitefiles/27163/2019-03-20%20-%20nbfa%20-%20letter%20re%20suntrust%20and%20BB&T%20merger.pdf>

¹⁰ Form 8-K, Corp, Securities and Exchange Commission (June 3, 2019)
<https://www.sec.gov/Archives/edgar/data/92230/000119312519164141/d689566d8k.htm>

¹¹ *and SunTrust Announce \$60 Billion Investment Commitment for New Truist Bank*, NCRC (July 16, 2019)
<https://ncrc.org/BB&T-suntrust-and-ncrc-announce-60-billion-community-investment-commitment-for-new-truist-bank/>

We believe this commitment reflects both the utility of the Community Reinvestment Act, and the good faith of the management of the respective merger partners.

We also applaud the Federal Reserve for conducting public hearings on this merger. Sadly, this is no small compliment since merger approvals too often occur in the dark. We believe such hearings should be mandatory for all proposed mergers. By rule, the Federal Reserve must evaluate such transactions transparently and they must allow the public an opportunity to comment.¹² In practice, noted former Federal Reserve employee Jeremy Kress, “the most important parts of the Fed’s process happen behind closed doors, shielded from public view.”¹³ As he detailed:

In my experience as a Fed attorney, it was common for a bank or its law firm to have private conversations with Fed representatives to informally vet a proposal before signing a merger agreement. If Fed representatives raised concerns about a proposal, the bank might not pursue the deal. But when Fed representatives expressed no reservations, the bank could enter a merger agreement with the Fed’s implicit blessing. . . . To be sure, the Fed eventually solicits public comment after a bank executes a merger agreement and files a formal application. The problem, however, is that private conversations preceding a formal filing can create internal momentum within the Fed. After Fed representatives give a bank the go-ahead to announce an acquisition, the deal becomes difficult to stop. . . . The secretive vetting of bank merger proposals has become so extreme that the Fed has not publicly denied a merger application in more than 13 years.¹⁴

We hope that this congressional hearing will serve notice to the Federal Reserve that it must take seriously the public’s interest in bank mergers, and that it should develop clear guidelines by which the public can comfortably understand when mergers will threaten systemic risk in the event of a subsequent insolvency by the resulting institution.

We believe such a clear rubric, discussed publicly in full daylight is important as the SunTrust/ deal will certainly not be the last such proposed transaction of this sort.

For questions, please contact Bartlett Naylor at bnaylor@citizen.org

¹² 12 USC 262.3, <https://www.govinfo.gov/content/pkg/CFR-2001-title12-vol3/pdf/CFR-2001-title12-vol3-sec262-3.pdf>

¹³ Jeremy Kress, *Fed is Rubber Stamp for Mergers*, AMERICAN BANKER (April 10, 2019) https://www.americanbanker.com/opinion/fed-is-a-rubber-stamp-for-bank-mergers-its-a-problem?utm_campaign=daily%20briefing-apr%2011%202019&utm_medium=email&utm_source=newsletter&eid=dca6df5d0fa0ec33c52df15f15bf4193&bxid=52b26d52c16bcfa46fee5574

¹⁴ Jeremy Kress, *Fed is Rubber Stamp for Mergers*, AMERICAN BANKER (April 10, 2019) https://www.americanbanker.com/opinion/fed-is-a-rubber-stamp-for-bank-mergers-its-a-problem?utm_campaign=daily%20briefing-apr%2011%202019&utm_medium=email&utm_source=newsletter&eid=dca6df5d0fa0ec33c52df15f15bf4193&bxid=52b26d52c16bcfa46fee5574