

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy

Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed policymaking.

SUMMARY: As a result of the changes in the competitive environment for financial services over the past few years, the FDIC is proposing to supplant its current policy on applications for mergers by adopting a revised statement of policy on bank merger transactions. The revised statement of policy would represent a shift in the FDIC's public posture toward competitive analysis of bank merger transactions in three primary areas:

- ° It would expand the "line of commerce" for which an analysis would be made;
- ° It would effectively deemphasize the significance of a relatively "localized" geographic market for both small and large banks; and
- ° It would address mergers involving relatively large banking organizations on a variety of levels (ranging from local to nationwide).

Safety and soundness considerations would be strengthened in that the statement would set forth, for the first time as a written policy, the FDIC's concern over the diminution of either capital or financial and managerial resources as a consequence of a bank merger transaction. Also, standards for voluntary merger transactions involving financially weakened institutions would be established.

DATE: Comments must be received by [30 days from publication in the Federal Register.]

ADDRESS: Comments on the revised policy statement should be sent to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to Room 3008 on weekdays between 8:30 a.m. and 5:00 p.m. and should reference the date and page number of this issue of the Federal Register. All written comments will be made available for public inspection during normal business hours at the Office of the Executive Secretary.

FOR FURTHER INFORMATION CONTACT: Dean Forrester Cobos, Examination Specialist, Division of Bank Supervision, (202) 389-4761, or Thomas A. Schulz, Counsel,

Legal Division, (202) 389-4684, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

Comment is solicited on the following proposed statement of policy.

FDIC Statement of Policy

BANK MERGER TRANSACTIONS

A. INTRODUCTION

It is the policy of the Federal Deposit Insurance Corporation to preserve the soundness of the banking system and promote market structures conducive to competition. Bank merger transactions may facilitate the orderly flow of investment capital and can be a valuable free market mechanism to effectively redeploy the productive resources of uncompetitive, weakened or inefficiently managed institutions. Thus, they may serve to strengthen the banking system, stimulate competition and provide improved service and convenience to the banking public.

B. STATUTORY AUTHORITY AND REQUIREMENTS

A proposed merger, consolidation, or purchase of assets and assumption of liabilities are all hereafter referred to collectively as mergers or merger transactions.

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c), as amended), popularly known as the Bank Merger Act, provides that, except with the prior written approval of the FDIC, no insured bank may merge with any other insured bank, if the acquiring, assuming or resulting bank is to be a nonmember bank. The section also requires such approval before any insured bank may merge with a noninsured bank or institution.

Paragraph (5)(A) of section 18(c) prohibits the FDIC from approving a transaction under the same test as would constitute a violation of section 2 of the Sherman Act (15 U.S.C. 2). Similarly, paragraph (5)(B) prohibits approval of a transaction under the same test as would constitute a violation of section 1 of the Sherman Act (15 U.S.C. 1) or section 7 of the Clayton Act (15 U.S.C. 18), unless the "anticompetitive effects . . . are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served." The exception of paragraph (5)(B) applies only when the enumerated anticompetitive effects are established. In order to invoke this exception, the proponents must show (i) that the probable effect of the transaction in meeting convenience and needs is likely to benefit a broad segment of potential bank customers, and (ii) that the expected benefit cannot reasonably be achieved through other less anticompetitive means.

In addition to the competitive impact, the statute requires the FDIC to consider in every case the financial and managerial resources and future prospects of the existing and proposed institutions (referred to as "banking

factors") as well as the convenience and needs of the community to be served. The FDIC, in the evaluation of proposed merger transactions, will also consider the requirements of the Community Reinvestment Act and the National Environmental Policy Act of 1969.

C. STANDARDS FOR APPROVAL

It is the policy of the FDIC's Board of Directors to approve all merger-type proposals involving sound banking institutions when the proposed transaction will not substantially lessen competition and will not significantly weaken the resulting institution by diluting its capital base or its financial and managerial resources.

Proposed merger transactions involving the acquisition of a financially weakened institution (or between financially weakened, but not insolvent institutions) which are not prohibited by the Bank Merger Act will be approved when it can be clearly demonstrated that the resulting insured institution will have sufficient financial and managerial resources to assure reasonable prospects for continued viability and satisfactory operation. The proposed acquisition of a seriously weakened institution, in which a significant lessening of competition would be likely, generally will be approved only when the adverse competitive impact would be offset or outweighed in the public interest by the probable effect of the transaction in resolving the problems of the weakened institution and in meeting the convenience and needs of the community by continuing or restoring banking service in a market. Under such circumstances, the FDIC will carefully weigh the potential disruptive impact to the banking public in the absence of such a transaction, and will consider the availability of less anti-competitive alternatives.

In no case, however, will the FDIC approve a merger proposal in which the resultant institution would not be financially sound or which would result in an institution which would be materially weaker than the existing parties to the merger.

D. EVALUATION OF THE PROPOSED TRANSACTION

The FDIC will analyze each proposed merger transaction, on which it must act under the provisions of the Bank Merger Act, on an individual case-by-case basis. The analysis will first consider the probable competitive impact of the proposal and, subsequently, the future prospects of the resulting institution based upon a review of the proponent's financial and managerial resources and other relevant considerations.

The competitive analysis will be conducted by the FDIC on a "tiered" approach subjecting the proposal first to a judgment based on concentration levels in selected major product lines and geographic market(s). If this review reveals little anticompetitive impact, further analysis (of the competitive factors) generally will not be conducted. If a material anticompetitive impact is disclosed in this first or subsequent levels of review, additional study of overlapping product lines, geographic market(s) served, and the significance of the transaction's overall effect will be necessary. When serious anticompetitive effects are in evidence, a thorough analysis of all material aspects of the

proposal must be conducted in order to develop and properly document a basis on which the FDIC's Board of Directors may act.

In order to determine the probable competitive impact of a proposed merger, it is necessary to establish both the relevant line(s) of commerce and the relevant geographic market(s) in which the transaction's effect will be most direct and immediate. The FDIC will consider where the merging institutions typically seek customers, the nature of services likely to be provided, and where existing or potential customers of the resulting institution may reasonably be expected to find alternative sources for these products and services. Thus, the product and geographic market(s) may be local, regional or nationwide (or some combination thereof) as appropriate to the individual circumstances. For purposes of this determination, it will generally not be necessary to delineate all possible forms of financial service products, but only those individual products or services which are material to the proponent's overall business (as measured by dollar volume, earnings or commitment of resources). When deposits or deposit originations are used as one of the proxies for measuring competitive levels in a geographic market, the funds of governmental entities and insured depository institutions will not be considered by the FDIC as originating within the local market as part of the normal course of a bank's business. In addition, when deposit proxy is used to measure the level of competition in a geographic market, the FDIC will aggregate the deposits of affiliated or commonly controlled financial institutions.

Within the delineated market(s) for the appropriate financial products or services, the FDIC will weigh the probable significance of the proposed transaction on existing competition, potential competition and the level of concentration of financial resources. The following financial service organizations will be included in the FDIC's analysis when it can be shown that they are likely to engage in significant competition with the resulting institution by price, convenience, customer service or other means for one or more of the product lines under consideration:

- ° All FDIC and FSLIC insured depository institutions represented by deposit taking offices in the delineated geographic market(s);
- ° Noninsured depository institutions, similar financial service firms and nonbank financial organizations represented by offices in the delineated geographic market(s);
- ° Depository institutions and nonbank financial organizations based outside of the delineated geographic market(s) when it can be demonstrated that they serve as a viable alternative source of service, originate a material volume of business and exert a measurable impact on the pricing of one or more specific financial-type services within the geographic market(s) under review.

Relatively large regional and national firms, with little or no physical presence in the local market(s), may often exert a substantial influence on local pricing decisions and competition. When appropriate, the market power and competitive influence of such firms will be taken into consideration by

the FDIC in judging the potential anticompetitive impact of a proposed merger transaction.

Proposed merger transactions between relatively large regional, multistate, or multinational banking organizations, while not inherently anticompetitive, may raise substantial competitive issues and concern. The acquisition of a locally based insured depository institution can often provide the acquiring organization with a cost effective "toehold" entry into a new market and stimulate competition in otherwise stagnant local markets. Similarly, the combination of two significant firms in a localized or regional market may be approved by the FDIC if the transaction would result in improved service and a better ability by the resulting organization to withstand external market pressures. An acquisition of one of the local or regional market's largest competitors by a nonlocally based firm, however, may raise substantial competitive concerns by diminishing competitive incentives and reducing the number of potential de novo entrants. No proposal will be approved by the FDIC which will substantially increase the level of concentration of financial resources in any significant product, service or line of commerce in any relevant geographic market or section of the country.

E. PROCEDURES AND RELATED MATTERS

Insured depository institutions seeking the FDIC's approval of a merger transaction may obtain forms and instructions from the regional office (Division of Bank Supervision) in which the head office of the resulting institution will be based. Completed applications and other pertinent materials, if any, should be filed with the appropriate regional director. The application will be reviewed by the regional office for compliance with applicable laws and with the rules and regulations of the Corporation. When all necessary information has been received, the application will be processed and a decision rendered by the regional director pursuant to the delegation of authority set forth in section 303.7 of the Corporation's rules and regulations (12 CFR 303.7) or the application will be forwarded to Washington.

1. Publication of Notice

The FDIC will not take final action on a merger application until notice of the proposed transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of paragraph (3) of section 18(c) of the Federal Deposit Insurance Act. The applicant will be furnished a suggested form of notice and advised of the appropriate intervals, and the number of times, required for such publication. The applicant must furnish a certificate of publication of notice to the regional director following compliance with the publication requirement. (Refer to section 303.6 of the FDIC's rules and regulations (12 CFR 303.6).)

2. Reports on Competitive Factors

Paragraph (4) of section 18(c) of the Federal Deposit Insurance Act provides that, before acting on an application for consent to merge, the FDIC must request reports on the competitive factors involved from the Attorney General, the Comptroller of the Currency and the Board of Governors of the

Federal Reserve System. These reports must ordinarily be furnished within 30 days and the applicant will, if it so requests, be given an opportunity to submit comments to the FDIC on the contents of the competitive factor reports.

3. Notification to the Attorney General

The FDIC will immediately notify the Attorney General of its approval of any merger transaction where the resulting bank is a state nonmember insured bank. Unless an emergency exists requiring expeditious action, the transaction may not be consummated until the thirtieth calendar day after the date of the FDIC's approval.

4. Insured Status of Deposit Accounts

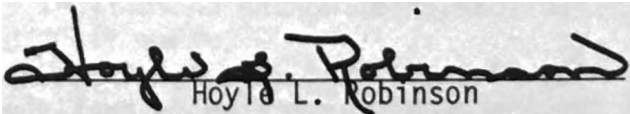
Under section 8(q) of the Federal Deposit Insurance Act (12 U.S.C. 1818(q)), whenever the liabilities of an insured bank are assumed: (i) the insured status of the bank whose liabilities are assumed terminates upon the date of receipt by the FDIC of satisfactory evidence of the assumption; (ii) the separate insurance of all assumed deposits terminates at the end of six months from the date the assumption takes effect or, in the case of any time deposit, the earliest maturity after the six-month period.

5. Legal Fees and Expenses

The applicant should review the FDIC's Statement of Policy on Applications, Legal Fees and Other Expenses.

By Order of the Board of Directors this 23rd day of September, 1985.

FEDERAL DEPOSIT INSURANCE CORPORATION



Hoyte L. Robinson
Executive Secretary

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