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LEGAL UPDATES AND NEWS

Regulators Provide Guidance on Recent M&A

On September 28, 2022, Federal Reserve Governor Michelle Bowman discussed the need for the Federal Reserve to modernize the methods it uses in analyzing the effect on competition in markets when evaluating mergers and acquisitions. Governor Bowman, speaking at the Conference of State Bank Supervisors' Community Bank Research Conference, noted that the "screens" used to identify mergers that do not have adverse effects on competition, and would therefore not require significant review, have historically relied solely on a combined bank's share of deposits compared to all other banks in a market as the primary measurement. These screens ignore other significant competitors such as credit unions, digital banks and nonbanks. Governor Bowman cited recent survey data indicating that, while the majority of community banks report that other community banks are still their primary competitors, that majority has steadily declined as credit unions and larger banks have become the dominant competitors for deposits in an increasing number of markets.

Governor Bowman stated that "With the proliferation of new competitors to traditional banks, it's imperative that we modernize our evaluation of competition to more consistently and comprehensively factor in all competitors in a market and consider how to address markets where deposits are a poor proxy for the full cluster of products and services offered to consumers and small businesses." She also stated that, while her remarks focused on issues for community banks, the framework for analyzing bank mergers for large banks also needs to be updated. She stated "The goal should be to apply a transparent, dynamic framework that allows the industry to evolve with market conditions and apply sensible regulatory oversight. Size should not be the controlling factor. A review and examination of a merger application should be based on a careful analysis of risks."

The current methods used by the Federal Deposit Insurance Corporation ("FDIC") to screen credit union acquisitions of banks are similarly hampered by the fact that the FDIC system for screens does not accommodate credit union and non-bank data. As counsel to credit unions and banks in these transactions, we have developed nonstandard methods for complying with FDIC application requirements. In some cases, the inclusion of credit unions and other non-bank entities in the analysis can help lower the perceived negative effects on competition resulting from a credit union and bank merger transaction. If you are a credit union considering an "in market" acquisition of a bank, we are available to discuss available methods to better position your transaction for success.

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Please contact any of our attorneys below if you have any questions regarding the information contained in this newsletter.

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