



BB&T and SunTrust: Merger Approval Process and Trends

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BB&T and SunTrust have proposed a merger that could form the eighth-largest bank holding company (BHC) by assets in the United States (see CRS Insight IN11062, *BB&T and SunTrust: The Latest Proposed Merger in a Long-Term Trend of Banking Industry Consolidation*). This has focused congressional attention on bank mergers. This Insight examines the bank merger regulatory approval process.

Merger Approval Process

BB&T and SunTrust are both BHCs with state-chartered subsidiary banks. The SunTrust bank is not a member of the Federal Reserve System. As such, the merger must be approved by the Federal Reserve (the Fed; primary federal regulator of BHCs and state member banks) under the [Bank Holding Company Act](#) and the Federal Deposit Insurance Corporation (FDIC; primary regulator of state nonmember banks) under the [Bank Merger Act](#).

Pursuant to these acts, mergers must meet several statutory conditions to be approved. While the statutory language of the acts differs in some ways, the agencies generally consider similar factors, including the banks' financial and managerial resources, past anti-money laundering compliance, and financial stability implications. Particularly pertinent in large bank mergers, both must consider competitive factors (i.e., the potential for monopoly power or anticompetitive effects) and the community's needs and convenience. For example, the merged entity may not initially hold more than 10% of total deposits nationally, 10% of all financial company liabilities nationally, or 30% of deposits in any state (certain states may have additional limits). The [Department of Justice reviews mergers](#) for compliance with federal antitrust laws. Furthermore, merging entities must have a good record of consumer protection compliance and [Community Reinvestment Act](#) (CRA; 12 U.S.C. §§2901-2908) performance.

The process includes opportunities for public input. Applicants generally must publish notice of their merger proposals, typically in newspapers, informing the public of the opportunity to submit written comments. In addition, the agencies may hold [hearings](#) on proposals, allowing interested parties to testify.

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BB&T and SunTrust Considerations

Large bank mergers have been infrequent in the current economic expansion. A CRS analysis of S&P Global Intelligence data indicates that since 2010, in 88% of bank acquisitions, the acquired bank had assets of less than \$1 billion, whereas 1% of acquisitions were for banks with greater than \$10 billion in assets. The BB&T-SunTrust proposal is an outlier in comparison. Suntrust has \$215.5 billion of assets, making it over twice as large as the next biggest post-crisis acquisition (see [Table 1.](#))

Table 1. Largest Postcrisis Mergers, by Acquired Bank Assets
(\$ in billions)

Announced date	Buyer	Acquired	Acquired Assets
2/7/2019	BB&T Corporation	SunTrust Banks, Inc.	\$215.5
6/16/2011	Capital One Financial Corporation	ING Bank, FSB	\$92.2
12/17/2010	Bank of Montreal	Marshall & Ilsley Corporation	\$51.9
8/27/2012	M&T Bank Corporation	Hudson City Bancorp, Inc.	\$43.6
10/30/2015	KeyCorp	First Niagara Financial Group, Inc.	\$39.4
1/22/2015	Royal Bank of Canada	City National Corporation	\$32.6
6/20/2011	PNC Financial Services Group, Inc.	RBC Bank (USA)	\$27.4
8/8/2016	TIAA Board of Overseers	EverBank Financial Corp	\$27.4
1/26/2016	Huntington Bancshares Incorporated	FirstMerit Corporation	\$25.5
7/22/2014	CIT Group Inc.	IMB HoldCo LLC	\$22.6

Source: S&P Global Intelligence, Congressional Research Service (CRS) analysis.

Absent divestitures, the merged entity would currently have \$441.2 billion in assets, well above the \$250 billion threshold that automatically subjects it to enhanced prudential regulation (EPR) mandated by the [Dodd-Frank Act](#). However, a bank of this size does not necessarily pose national anticompetitive or financial-stability issues. BB&T and SunTrust have already complied individually with most EPR requirements that would apply to the merged entity, because the threshold has only recently been increased from \$50 billion. The merger [application](#) notes that the merged bank would remain significantly smaller than the very [largest BHCs](#) and hold 2.5% of U.S. banking assets and 2.7% of deposits. However, competitive effects are also considered at the state and local level. Because both banks are concentrated in the Southeast, they are proposing to divest branches in markets where their market share would be too great (the specific branches proposed are confidential).

Merger approvals are one of the main CRA enforcement mechanisms. The [merger application](#) reports a current CRA rating of “outstanding” for BB&T and “satisfactory” for SunTrust.

In regard to anti-money laundering compliance, a [consent order](#) was issued in 2017 requiring BB&T to correct deficiencies in its compliance risk management program. The [merger application](#) details the steps BB&T has taken since, and in April the consent order was [terminated](#).

Merger Approval Trends

How frequently are merger applications approved? Data are available from the Fed covering [2006 to 2017](#) and from the [FDIC covering 2013 to 2017](#). (As noted above, most of these mergers involved small banks.) In practice, no application was formally rejected over these periods. Instead, applicants withdrew

them before rejection, and the FDIC may also return applications. Alternately, banks might not file an application if preliminary discussions with the agencies raise concerns.

At the Fed, the approval rate has increased since the crisis, as shown in the ratio of approved to withdrawn applications in **Table 2**. After reaching a postcrisis low of 2.8 in 2010, the ratio rose in most years. In 2017 and 2018, it surpassed precrisis levels, reaching 19.0 in 2018. For the FDIC, the data show no clear trend, although 2018 does have the highest ratio of the years available.

Table 2. Federal Reserve Merger Application Statistics

Year	Approved	Withdrawn	Ratio	Average Days
2006	463	44	10.5	n/a
2007	466	36	12.9	n/a
2008	320	62	5.2	n/a
2009	222	66	3.4	n/a
2010	223	80	2.8	n/a
2011	194	43	4.5	71
2012	226	43	5.3	66
2013	190	40	4.8	56
2014	248	25	9.9	60
2015	279	21	13.3	71
2016	245	28	8.8	59
2017	240	15	16.0	65
2018	190	10	19.0	57

Source: Letter from Jerome H. Powell, Chairman of the Board of Governors of the Federal Reserve System, to the Honorable Elizabeth Warren, May 10, 2018; The Federal Reserve, Semiannual Report on Banking Applications Activity, vol. 6, no. 1, March 2019; CRS calculations.

Table 3. FDIC Regular Merger Application Statistics

Year	Approved	Withdrawn/ Returned	Ratio	Average Days
2013	143	17	8.4	65
2014	136	12	11.3	66
2015	149	7	21.3	64
2016	119	9	13.2	69
2017	118	8	14.8	62
2018	140	6	23.3	68

Source: FDIC Bank Application Action database, at <https://www.fdic.gov/regulations/applications/actions.html>.

No clear trend is present in the average number of days for merger approval. Recently, approvals in cases that elicit adverse public comments have occurred more quickly, however. Although these proposals still take longer to approve than others, as shown in **Table 4**, the time has shortened in recent years, reaching 113 days in 2018.

Table 4. Approvals by Comment Type

Federal Reserve Applications				
Year	No Adverse Public Comments		Adverse Public Comments	
	Number	Average days	Number	Average days
2011	182	62	12	212
2012	219	60	7	283
2013	184	52	6	203
2014	237	53	11	209
2015	262	56	17	297
2016	233	53	12	159
2017	219	56	19	173
2018	178	50	12	113

Source: The Federal Reserve, Semiannual Report on Banking Applications Activity, vol. 6, no. 1, March 2019.

Some [critics](#) believe that the banking regulators are too deferential to banks in their interpretation of the statutory considerations when approving mergers. Other [critics](#) believe the process allows outside actors to use adverse public comments to extract inappropriate concessions from the merging banks.

These trends might shed some light on whether merger approval standards have changed, although conclusions would be limited by the small number of withdrawn/returned applications and the lack of formal rejections and data on inquiries that did not result in applications. The increasing approved-to-withdrawn ratio at the Fed could be evidence that standards have become more permissive. (FDIC data are not available over the same period.) Similarly, the average days to approval has fallen significantly in cases where there were adverse public comments, although the overall days to approval shows no trend.

However, other possible explanations exist for such trends. For example, the quality of applications could have improved, because of improving economic conditions or if merger requirements in the postcrisis regulatory environment became clearer.

Author Information

Marc Labonte
Specialist in Macroeconomic Policy

David W. Perkins
Analyst in Macroeconomic Policy

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