

March 20, 2019

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Re: The National Black Farmers Association's Objection to proposed merger of *SunTrust Banks, Inc. and BB&T Corporation*

Dear Chairman Powell, Assistant Attorney General Delrahim and Chairman Simons,

On behalf of the National Black Farmers Association ("NBFA"), we urge the members of the Board of Governors for the Federal Reserve System ("Board" or "Fed") to reject the merger of SunTrust Banks, Inc. ("SunTrust") and BB&T Corporation ("BB&T"), as proposed. The Board is charged with the critical task of reviewing the merger between SunTrust and

BB&T to assess anticompetitive effects under U.S. antitrust laws, and regulations such as the Community Reinvestment Act.<sup>1</sup>

The proposed merger of SunTrust and BB&T would be the largest since the 2008 financial crisis and it would create the sixth-largest bank in the United States.<sup>2</sup> The NBFA is concerned that the proposed merger will increase concentration in specific markets in the Southeastern United States—especially in communities in Virginia, Georgia, and Florida. The combined firm would be the largest in the combined markets of these three states. In local communities the impact will be more intense. In the following metropolitan statistical areas (“MSAs”), the merged firm will have over 20% market share: Atlanta-Sandy Spring-Roswell, GA; Charlottesville, VA; Deltona-Daytona Beach-Ormond Beach, FL; Durham-Chapel Hill, NC; Homosassa Springs, FL; Macon-Bibb County, GA; Roanoke, VA; Staunton-Waynesboro, VA; Virginia Beach-Norfolk-Newport News, VA; and Winston, Salem, NC. In seven of these communities, the resulting increase in market share will be “presumed to likely increase market power” according to the U.S. Department of Justice & FTC Guidelines, measured through the Herfindahl–Hirschman Index (“HHI”).<sup>3</sup> The increased concentration in these MSAs will enhance the ability and incentive for the merged entity to exercise market power, likely leading

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<sup>1</sup> Bank Holding Company Act of 1956, 12 U.S.C § 1842(b), *et seq.*; 12 C.F.R. § 225.13 (Factors considered in acting on bank acquisition proposals).

<sup>2</sup> Rachel Louis Ensign & Allison Prang, *BB&T to Buy SunTrust in Largest Bank Deal Since the Financial Crisis*, The Wall Street Journal (Feb. 7, 2019), <https://www.wsj.com/articles/suntrust-bb-t-to-combine-in-all-stock-merger-11549537817>.

<sup>3</sup> U.S. Department of Justice & FTC, Horizontal Merger Guidelines, § 5.3 (2010).

to anticompetitive effects in the commercial banking and mortgage lending markets, as well as creating a merged bank that is less responsive to the needs of the local communities it serves.<sup>4</sup>

Furthermore, in rural and economically disadvantaged areas the merger will have disproportionate effects, such as shuttered branch offices and reduction in staff that oversee compliance with the Community Reinvestment Act (“CRA”). Indeed, the NBFA also has serious concerns about the combined firm’s compliance with the CRA, which protects NBFA members and other economically vulnerable and disadvantaged communities.

### **Interests of the National Black Farmers Association**

The NBFA is a non-profit organization representing tens of thousands of African American farmers and their families in the United States. The NBFA provides education services and advocacy efforts concerning civil rights, land retention, access to public and private loans, education and agricultural training, and rural economic development for black and other small farmers. The NBFA has fought discrimination on all fronts and has been a driving force in remedying past discrimination by the United States government. SunTrust received \$50,000 from the settlement in the *In re Black Farmers Discrimination Litigation* in connection with creating a Qualified Settlement Fund to distribute the settlement, which substantially benefitted NBFA members.

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<sup>4</sup> Rachel Louis Ensign & Allison Prang, BB&T to Buy SunTrust in Largest Bank Deal Since the Financial Crisis, *The Wall Street Journal* (Feb. 7, 2019), <https://www.wsj.com/articles/suntrust-bb-t-to-combine-in-all-stock-merger-11549537817>; Matt Kempner & J. Scott Trubey, SunTrust combination with BB&T means changes for customers, *The Atlanta Journal-Constitution* (Feb. 7, 2019), <https://www.ajc.com/news/local/suntrust-combination-with-means-changes-for-customers/e0GN1UY4wJGd9WWhWatyJ/> (“None of the banks with the five biggest metro Atlanta footholds — and a combined 70 percent of deposits — will be based locally.”).

Access to financial resources on equal terms is a matter of critical importance to the NBFA, its members and their families. The NBFA is deeply concerned with the consolidation of financial institutions such as SunTrust and BB&T both on its own terms and as a troubling trend that makes capital, financial and loan services less accessible to the communities where NBFA members earn their livelihoods.

Both the NBFA and members are, or have been, customers of SunTrust or BB&T. The NBFA has members throughout the Southeastern United States, including hundreds of members in Virginia, Georgia and Florida, where the effects will be felt the most. The NBFA is deeply troubled by the consequences that a merger between BB&T and SunTrust will bring to its members and therefore to the local communities affected by the proposed merger. For example, if this merger is approved, none of the banks in Atlanta that account for 70% of the city's deposits will be based in that city.<sup>5</sup>

### **The Merger is a Harbinger of Further Consolidation**

It is widely anticipated that the merger will set in motion a wave of consolidation in the banking industry.<sup>6</sup> Creeping concentration presents the risk that banking markets will become highly concentrated through successive mergers.

Regulators such as the Federal Reserve System ("Fed") should draw a line. If this proposed merger is approved, large financial institutions in the United States will be

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<sup>5</sup> Matt Kempner & J. Scott Trubey, *SunTrust combination with BB&T means changes for customers*, The Atlanta Journal-Constitution (Feb. 7, 2019), <https://www.ajc.com/news/local/suntrust-combination-with-means-changes-for-customers/e0GN1UYY4wJGd9WWhWatyJ/> ("None of the banks with the five biggest metro Atlanta footholds — and a combined 70 percent of deposits — will be based locally.").

<sup>6</sup> Brooke Sutherland, *BB&T Solves Jamie Dimon's 'Too Many Banks' Problem*, Bloomberg (Feb. 7, 2019), <https://www.bloomberg.com/opinion/articles/2019-02-07/bb-t-suntrust-merger-may-start-wave-of-bank-consolidation>.

emboldened to pursue further consolidation in already concentrated markets. This will be especially true if there are no modifications, or conditions, set by the Fed.

In a letter to Board Chairman Jerome Powell on February 7, 2019, Senator Warren noted that from 2006 to 2017, the Federal Reserve System approved 3,316 of 3,819 merger applications (or 86.8%) and that during this same time period, it did not deny a single merger application.<sup>7</sup> Senator Warren stated: “The Board’s record of summarily approving mergers raises doubts about whether it will serve as a meaningful check on this consolidation that creates a new too big to fail bank and has the potential to hurt consumers.”<sup>8</sup>

**The Merger is Likely to Have Serious Anticompetitive Effects In Communities in the Southeastern United States**

Merger review of financial institutions should ensure that “undue concentrations are prevented in specialized investment banking product lines as well as in localized commercial banking markets.”<sup>9</sup> Governing regulations require the regional impact of the proposed merger to be closely examined. The Board should reject any proposed merger that “would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the business of banking *in any part* of the United States.”<sup>10</sup> Similarly, a merger should be rejected if “[t]he effect of the transaction may be substantially to lessen competition *in any section of the country*, tend to create a monopoly, or in any other manner be in restraint

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<sup>7</sup> Letter from Senator Elizabeth Warren to Jerome H. Powell, Chairman of Board of Governors of the Federal Reserve System, (Feb. 7, 2019), [https://www.warren.senate.gov/imo/media/doc/2019.02.07%20Letter%20to%20Chairman%20Powell%20re%20Bank%20M&A\[2\].pdf](https://www.warren.senate.gov/imo/media/doc/2019.02.07%20Letter%20to%20Chairman%20Powell%20re%20Bank%20M&A[2].pdf).

<sup>8</sup> *Id.*

<sup>9</sup> F.M. Scherer, *Financial Mergers and Their Consequences* (Harvard Kennedy School of Government, Working Paper No. RWP13-019, 26, June 2013).

<sup>10</sup> 12 C.F.R. § 225.13(a)(1) (emphasis added).

of trade, unless the Board finds that the transaction's anti-competitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community.”<sup>11</sup> Precedent under Section 7 of the Clayton Act similarly considers localized effects of banking merger activity, down to the municipal level.<sup>12</sup>

Increased concentration and the enhanced ability and incentive to exercise market power that accompanies it disadvantages consumers because it generally results in lower interest rates paid on deposits, and less favorable financing terms.<sup>13</sup> Enforcement of antitrust laws has an observed correlation to higher deposit interest rates.<sup>14</sup> Thus there is a direct tie between reduced concentration of market power due to enforcement of antitrust laws, and increased interest rates on deposits for consumers and small businesses.

In the case of SunTrust and BB&T, regulatory scrutiny of the anticompetitive effects across the geographic markets in which SunTrust and BB&T formerly competed is necessary, especially with respect to the Southeastern United States, and in particular the states of Florida, Georgia, and Virginia.

**Commercial Banking:** the combined firm will be the sixth largest bank in the United States measured by deposits. The regional impacts would be more severe. The combined firm would be the largest in the combined markets of Florida, Georgia, and Virginia, according to

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<sup>11</sup> 12 C.F.R. § 225.13(a)(2) (emphasis added).

<sup>12</sup> *U.S. v. Philadelphia Nat'l Bank*, 374 U.S. 321, 357 (1963) (“The proper question to be asked in this case is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate.”).

<sup>13</sup> Kempner & Trubey, *supra* note 4 (providing the following quote from Greg McBride, the chief financial analyst for Bankrate.com: “What we have noticed in the past . . . is that with concentrated market share tends to mean less favorable pricing for consumers, less competitive deposit rates and less competitive pricing for many loans.”).

<sup>14</sup> Jack Libersohn, *How Does Competition Affect Bank Lending? Quasi-Experimental Evidence from Bank Mergers* (Dec. 2, 2017), [http://web.mit.edu/liebers/www/liebersohn\\_jmp.pdf](http://web.mit.edu/liebers/www/liebersohn_jmp.pdf).

FDIC data, with 15.5% of the deposits as of June 30, 2018.<sup>15</sup> In Georgia, the combined firm will be the largest bank, with 26.73% of deposits.<sup>16</sup> In Virginia, the combined firm will be the second largest, with 13.67% of the deposits.<sup>17</sup> One can expect that lower deposit rates, higher interest rates and less favorable financing terms will follow.

The Department of Justice’s Merger Guidelines states that “Mergers resulting in moderately concentrated markets that involve an increase in the [HHI] of more than 100 points potentially raise significant competitive concerns and often warrant scrutiny.”<sup>18</sup> The Guidelines note that in “highly concentrated” markets “an increase in the HHI of between 100 points and 200 points potentially raise significant competitive concerns and often warrant scrutiny,” and “an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power.” Many markets when viewed from an MSA perspective will result in significant concentration, and increases of 100 or more in HHI, due to the merger:<sup>19</sup>

- ATLANTA-SANDY SPRINGS-ROSWELL, GA: the merged firm will be the largest in the market with over 32%, and the HHI will cross the “moderately concentrated” threshold from 1476 to 1748, resulting in an increase in HHI of 272.

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<sup>15</sup> Deposit Market Share Report, FDIC, <https://www5.fdic.gov/sod/sodMarketBank.asp?barItem=2> (search all counties in Florida, Georgia, and Virginia).

<sup>16</sup> *Id.* (search all counties in Georgia).

<sup>17</sup> *Id.* (search all counties in Virginia).

<sup>18</sup> U.S. Department of Justice & FTC, *supra* note 3.

<sup>19</sup> Deposit Market Share Report, *supra* note 16 (search Metropolitan Statistical Area).

- CHARLOTTESVILLE, VA: the merged firm will be the largest in the market, with over 27%, and the HHI will cross to the “moderately concentrated” threshold from 1468 to 1837, resulting in an increase in HHI of 369.
- DELTONA-DAYTONA BEACH-ORMOND BEACH, FL: the merged firm will be the largest in the market, with nearly 28%, and the HHI will cross to the “modestly concentrated” threshold from 1361 to 1527, resulting in an increase in HHI of 166.
- DURHAM-CHAPEL HILL, NC: the merged firm will be the second largest in this already “modestly concentrated” market, with over 23% of the market. Here, the HHI will increase from 2197 to 2449, for an increase of 252.
- HOMOSASSA SPRINGS, FL: the merged firm will be the largest in this already “modestly concentrated” market, with nearly 31% of the market. Here, the HHI will increase from 1568 to 1760, for an increase of 192.
- MACON-BIBB COUNTY, GA: the merged firm will be the second largest in this already “modestly concentrated” market, with nearly 28% of the market. Here, the HHI will increase from 1671 to 2054 will increase by 383.
- ROANOKE, VA: the merged firm will be the largest in the market, with over 31%, and the HHI will cross to the “moderately concentrated” threshold from 1358 to 1827, resulting in an increase in HHI of 468.
- STAUNTON-WAYNESBORO, VA: the merged firm will be the second largest in the market, with nearly 21%, and the HHI will cross to the “moderately

concentrated” threshold from 1366 to 1563, resulting in an increase in HHI of 196.

- THE VILLAGES, FL: the merged firm will be the second largest in the market, with over 14%, and the HHI will cross to the “highly concentrated” market threshold from 2489 to 2582, resulting in an increase in HHI of 93.
- VIRGINIA BEACH-NORFOLK-NEWPORT NEWS, VA-NC: the merged firm will be the largest in the market, with nearly 29%, and the HHI will cross to the “moderately concentrated” threshold from 1479 to 1891, resulting in an increase in HHI of 412.
- WINSTON-SALEM, NC: the merged firm will be the largest in this market, with over 77% of the deposits within this already “highly concentrated” market. Here, the HHI will increase from 5784 to 6092, for an increase in HHI of 308.

The widespread increase in HHI across markets expressed by this data have practical effects. Empirical evidence shows a direct correlation between decreases in HHI associated with antitrust enforcement and increases in interest rates in bank deposits; in short, increased market concentration leads to worse economic terms for bank customers.<sup>20</sup>

**Mortgage Banking:** the combined firm will have nearly 14% of the national mortgage banking market.<sup>21</sup> At the regional and local level, the impacts will be felt more directly. “The combined company will be the second-largest regional bank in mortgages, with home loans

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<sup>20</sup> Libersohn, *supra* note 15.

<sup>21</sup> *Bb&t Corporation*, CSIMarket, [https://csimarket.com/stocks/compet\\_glance.php?code=BBT](https://csimarket.com/stocks/compet_glance.php?code=BBT) (last visited Mar. 15, 2019); *Suntrust Banks Inc.*, CSIMarket, [https://csimarket.com/stocks/compet\\_glance.php?code=STI](https://csimarket.com/stocks/compet_glance.php?code=STI) (last visited Mar. 15, 2019).

making up 27% of the combined company's total lending, and commercial real estate loans accounting for another 12%.”<sup>22</sup>

The aggregate impact on these lines of business are likely to be substantial, especially in Florida, Georgia, and Virginia, where many NBFA members earn their livelihoods. Because the mortgage and lending markets are localized, the merger will create acute anticompetitive effects on a community-specific basis, including the MSAs discussed above.

### **The Merger Will Likely Have Non-Price Anticompetitive Effects**

**Increased Entry Barriers:** As demonstrated above, the merger will result in substantial increases in market concentration in at least eleven regional markets. This increase in concentration will result in increased entry barriers in these markets.<sup>23</sup> New entrants are less likely in concentrated banking markets.<sup>24</sup>

**Quality of Services:** The merger is likely to result in a decline in the quality of services to NBFA members. Consolidation makes financial services less responsive to the communities they serve, and this is especially true with respect to loans to small businesses and consumers.<sup>25</sup>

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<sup>22</sup> Bonnie Sinnock et al., *5 ways mortgages will shape the BB&T and SunTrust merger*, National Mortgage News (Feb. 7, 2019) <https://www.nationalmortgagenews.com/list/5-ways-mortgages-will-shape-the-bb-t-and-suntrust-merger>.

<sup>23</sup> VICTOR J. TREMBLAY & CAROL H. TREMBLAY, *NEW PERSPECTIVES ON INDUSTRIAL ORGANIZATION*, “Market Structure, Industry Concentration, and Barriers to Entry” (Springer 2012).

<sup>24</sup> Timothy F. Bresnahan & Peter C. Reiss, *Entry and Competition in Concentrated Markets*, 99 JOURNAL OF POLITICAL ECONOMY 5 (1991).

<sup>25</sup> Robert B. Avery & Katherine Samolyk, *Bank Consolidation and the Provision of Banking Services: The Case of Small Commercial Loans* (Dec. 2000), <https://www.fdic.gov/bank/analytical/working/wp00-01.pdf> (“[A]s banks get larger and more organizationally complex, their business focus shifts to larger commercial customers or to more standardized types of loan products.”).

Lending in rural communities is negatively impacted by consolidation.<sup>26</sup> Customer response surveys consistently show a decline in satisfaction following mergers or consolidation.<sup>27</sup>

**Loss of Consumer Choice:** Mergers such as the one between SunTrust and BB&T result in a loss of consumer choice, and reduce the incentive for banks to compete on features and services.<sup>28</sup> Fewer major competitors will result in lessened competition among banks to offer attractive interest rates on deposits, and lending rates.<sup>29</sup>

**Innovation:** The merger is part of a trend of consolidation that will reduce the incentive for innovation. In economic terms, innovation is measured by the introduction of new, substantially improved goods and services.<sup>30</sup> A substantial motivating factor in the merger is to increase investment in technology for the combined bank.<sup>31</sup> But it is a mistake to confuse increased reliance on digital banking with innovation. The benefits of technology are dubious to most consumers.<sup>33</sup> This is especially true for customers in rural locations, or customers who prefer (or require) personal service, as opposed to service by algorithms. In this regard, the aim of the merger appears to be replacing more costly customer services with technology, which is

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<sup>26</sup> *Id.*

<sup>27</sup> David J. Urban & Michael D. Pratt, *Perceptions of banking services in the wake of bank mergers: an empirical study*, 14:2 JOURNAL OF SERVICES MARKETING 118—131 (2000).

<sup>28</sup> Chris Isidore, *Here's why consumers have fewer choices than they used to*, CNN Business (Dec. 5, 2017) <https://money.cnn.com/2017/12/05/news/companies/corporate-consolidation/index.html>.

<sup>29</sup> Suzanne Martindale et al., *Trapped at the Bank: Removing Obstacles To Consumer Choice In Banking*, Consumers Union (May 20, 2012), <https://advocacy.consumerreports.org/wp-content/uploads/2013/09/TrappedAtTheBankI.pdf>.

<sup>30</sup> Robert E. Litan et al., IMPROVING MEASURES OF SCIENCE, TECHNOLOGY, AND INNOVATION: INTERIM REPORT, “Measuring Innovation” (The National Academies Press 2012), <https://doi.org/10.17226/13358>.

<sup>31</sup> Kristin Broughton, *BB&T-SunTrust Tie-Up Brings Tech Budgets Into Focus*, The Wall Street Journal (Feb. 7, 2019), <https://www.wsj.com/articles/bb-t-suntrust-tie-up-brings-tech-arms-race-into-focus-11549575429>.

<sup>33</sup> MyBankTracker, *5 Reasons Not to Use an Online Bank*, U.S. News & World Report (Aug. 24, 2012), <https://money.usnews.com/banking/articles/reasons-not-to-use-an-online-bank>.

no substitute.<sup>34</sup> The Fed should carefully scrutinize any purported pro-competitive justification that relies on an increased investment in technology.<sup>35</sup>

The procompetitive rationale that this merger will serve local communities with better technology may not apply to these constituents. Not all members of the communities that SunTrust and BB&T serve have Internet connections, or would be comfortable making personal financial transactions on electronic devices without personal service to explain the options and features that are available. Any convenience that is achieved by banks' increased reliance on technology and on-line access is tempered by the tendency of these features to 'lock in' users, making it costly to switch banks, and automating the process by which banks can charge fees and change fee structures with no practical scrutiny from their customers.<sup>36</sup>

### **The Merger Will Benefit Corporate Profits at the Expense of Customers**

That the investment community is in favor of the merger, both on its own terms, and as a "tipping point" that signals further consolidation should give the Fed serious pause.<sup>37</sup> The efficiencies from the merger will be achieved at the expense of customers in rural communities, and a reduction in compliance staff tasked with monitoring enforcement of consumer protection

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<sup>34</sup> Karen McDermott, *Striking a delicate balance: Technology should augment, not replace, human interaction in banking*, CIO (Sept. 6, 2018), <https://www.cio.com/article/3304237/striking-a-delicate-balance-technology-should-augment-not-replace-human-interaction-in-banking.html>

<sup>35</sup> Kevin Smith, *Artificial intelligence will wipe out half the banking jobs in a decade, experts say*, The Mercury News (Apr. 23, 2018), <https://www.mercurynews.com/2018/04/20/artificial-intelligence-will-wipe-out-half-the-banking-jobs-in-a-decade-experts-say/>

<sup>36</sup> Nelson D. Schwartz, *Online Banking Keeps Customers On Hook for Fees*, The New York Times (Oct. 15, 2011), <https://www.nytimes.com/2011/10/16/business/online-banking-keeps-customers-on-hook-for-fees.html>.

<sup>37</sup> Jim Marous, *Too Big to Fail, Too Small to Succeed*, The Financial Brand (Feb. 11, 2019), <https://thefinancialbrand.com/80650/digital-banking-technology-innovation-merger-suntrust-bbt/> ("[M]any in the investment community believe the BB&T+SunTrust merger may be the tipping point for future consolidation of the industry. One benefit of the just announced combination of regional giants is the ability to reduce overhead and benefit from bigger scale and scope.").

laws such as the CRA. These increased profits should be viewed as a form of monopoly “rents” that are achieved not by offering superior products, but by successfully restricting competition and choice in banking markets.<sup>38</sup>

### **The Merger Will Be Contrary to the Convenience And Needs of the Community**

Another key factor the Board must consider in its review of the SunTrust and BB&T merger is “[t]he convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 ... and regulations issued thereunder . . . .”<sup>39</sup> This factor favors rejection of the merger because it will lead to a significant reduction in compliance under the CRA. Enforcement of the CRA is critical to the NBFA and its members, as farmers’ livelihoods depend on access to capital and financial services on fair and equal terms.

The CRA requires the Board to “assess the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.”<sup>40</sup> The CRA protects minority and economically disadvantaged communities such as those in which NBFA members earn their livelihoods.<sup>41</sup>

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<sup>38</sup> Scherer, *supra* note 10, at 9 (“[I]ndustrial organization theory and statistical evidence teach that market concentration -- that is, a high market share collectively held by the largest few sellers in a well-defined and meaningful economic market -- is conducive to either monopoly pricing or cooperative oligopoly pricing, yielding elevated prices and supra-normal profits (i.e., economic rents).”).

<sup>39</sup> 12 C.F.R. § 225.13(b)(3).

<sup>40</sup> 12 U.S.C. § 2903(a)(1).

<sup>41</sup> Lei Ding & Leonard Nakamura, “Don’t Know What You Got Till It’s Gone — The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market,” (Federal Reserve Bank of Minneapolis, Working Paper No. 17-24, at 1, 2017) <https://www.minneapolisfed.org/institute/working-papers/wp17-24.pdf> (“We find evidence that the loss of CRA eligibility status in a neighborhood leads to a decrease of about 10 percent to 20 percent (depending on the models and specifications used) in the volume of purchase mortgage originations by

CRA concerns are raised here because a motivating factor in the merger is a cost savings from closing branches at rural locations.<sup>42</sup> BB&T and SunTrust have announced that they plan to save \$1.6 billion in operating expenses by closing hundreds of branch offices.<sup>43</sup> BB&T's CEO, Kelly King, said that the bank has “a lot of small branches in a lot of rural areas, and we’re being much more aggressive in terms of rationalizing that structure.” Observers have noted that BB&T branches that service rural locations will be closed.<sup>44</sup>

NBFA is concerned that these branch reductions will have a disproportionate impact on branches that service NBFA members, and other farmers in rural areas. These closures will disproportionately impact NBFA members, and make the merged firm less responsive to the needs of customers in economically vulnerable communities.

NBFA is also concerned that the merger may result in a reduction of staff tasked with compliance issues related to legislation (such as the CRA) that is important to the NBFA and its members. Compliance staff cuts have become common in the last two years.<sup>46</sup> The NBFA is concerned that BB&T and SunTrust will use the merger to accelerate these reductions.<sup>47</sup>

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CRA-regulated lenders. . . . The CRA effects are more pronounced among minority borrowers and borrowers who used to qualify for CRA credit but became newly ineligible. Without the incentive of CRA, it seems depository institutions are less likely to keep up or expand their supply of mortgage credit in lower-income neighborhoods; instead, they tend to scale back their lending from these neighborhoods by reducing the supply of mortgage credit to minority borrowers and borrowers who no longer qualify for CRA credit.”)

<sup>42</sup> Jordan Wathen, *BB&T and SunTrust Have Plenty of Branch Fat to Trim*, The Motely Fool (Feb. 9, 2019), <https://www.fool.com/investing/2019/02/09/bbt-and-suntrust-have-plenty-of-branch-fat-to-trim.aspx>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (“Roughly 46% of BB&T’s branches have less than \$50 million in deposits, branches that are unlikely to be particularly profitable if the bulk of their value comes from sourcing liabilities rather than generating noninterest income.”).

<sup>46</sup> Richard Partington, *Banks Trimming Compliance Staff as \$321 Billion in Fines Abate*, Bloomberg (Mar. 22, 2018), <https://www.bloomberg.com/news/articles/2017-03-23/banks-trimming-compliance-staff-as-321-billion-in-fines-abate>.

<sup>47</sup> Section 42 of the Federal Deposit Insurance (FDI) Act, 12 U.S.C. § 1831r, <http://www.fdic.gov/regulations/compliance/manual/pdf/X-2.1.pdf>; see also Policy Statement of Office of the

The FDIC has published guidance for mergers and acquisitions of banking institutions that recommend the following:<sup>48</sup>

- “Consider the effect of the merger/acquisition on the demarcated CRA assessment area. Should the assessment area be expanded as a result of the transaction?
- Determine whether the merger will change how the surviving bank is evaluated for CRA. For example: Will an increase in asset size define the bank as an ‘intermediate small bank’ after two consecutive years with assets above the published threshold? Will the merger result in the acquisition of branches in a separate Metropolitan Statistical Area (MSA) or a non-contiguous non-MSA?
- Ensure the CRA Public File at each office is updated to reflect new loan-to-deposit ratios (for institutions subject to the small bank lending test), updated assessment area(s), products and services, HMDA disclosure statement (if applicable), and branch listing.
- Ensure branch closing policies adhere to statute and applicable policy.
- Consider Interstate Banking and Branching Efficiency Act applicability. Review impacts on how the surviving institution will be evaluated.

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Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision Concerning Branch Closing Notices and Policies, 64 Fed. Reg. 34,845 (June 29, 1999).

<sup>48</sup> Matthew Z. Zamora, *Mergers and Acquisitions: A Compliance Perspective*, FDIC, 14 (2013), <https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum13/sisummer13-article02.pdf>.

- Ensure mergers between insured depository institutions (IDI) and an IDI and a noninsured institution satisfy the requirements of the Bank Merger Act and related Interstate Banking and Branching Efficiency Act.”

NBFA requests that, as part of its deliberations, the Board provide public information that gives transparency to CRA compliance issues for the combined firm.

### **BB&T’s History of Non-Compliance with the CRA Should Concern Regulators**

The Board must consider the merging firms’ “compliance with laws and regulations” in determining whether to approve a merger.<sup>49</sup> In the past the Federal Deposit Insurance Corporation (“FDIC”) has identified unfair lending practices conducted by BB&T. The NBFA is concerned that because BB&T is the acquiring party, it may seek to impose practices not compliant with the CRA on the merged entity.

For instance, in 2008, the FDIC downgraded BB&T’s CRA rating from outstanding to satisfactory due to violations of the anti-discrimination provisions of the fair lending laws and regulations.<sup>50</sup> The FDIC stated that it had identified a pattern or practice of violations of the Equal Credit Opportunity Act,<sup>51</sup> the Federal Reserve Board’s implementation regulation,<sup>52</sup> the Fair Housing Act,<sup>53</sup> and the Department of Housing and Urban Development’s Fair Housing Regulations.<sup>54</sup>

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<sup>49</sup> 12 C.F.R. § 225.13(b)(2).

<sup>50</sup> *Community Reinvestment Act Performance Evaluation*, FDIC, 32 (Jan. 22, 2008) [https://www5.fdic.gov/CRAPES/2008/09846\\_080122.PDF](https://www5.fdic.gov/CRAPES/2008/09846_080122.PDF).

<sup>51</sup> 15 U.S.C. § 1691, *et seq.*

<sup>52</sup> 12 C.F.R. Part 202.

<sup>53</sup> 42 U.S.C. § 3605.

<sup>54</sup> 24 C.F.R. Part 100.

In its most recent CRA report on BB&T, the FDIC again identified a substantive violation of the fair lending laws. In the report, the FDIC stated that “findings from a 2015 Consumer Financial Protection Bureau targeted review resulted in a substantive violation of Regulation B, which implements the Equal Credit Opportunity Act.”<sup>55</sup> While the violation identified in the report did not lower BB&T’s CRA rating, it shows BB&T’s history of violating Fair Lending laws. The prospective merger risks spreading BB&T’s lax compliance culture to SunTrust branch locations. If so, everyday Americans, including members of the NBFA, will suffer.

**The Board Should Reject Any Request for the Combined Firm to be Regulated by the FDIC**

The NBFA has serious concerns about the efficacy of CRA regulation given the combination. BB&T has more assets than SunTrust and is currently regulated by the FDIC. The NBFA understands that the merged bank may seek to be regulated by the FDIC. NBFA strongly opposes this suggestion. Should the merger proceed, the Federal Reserve should regulate the merged entity.

In the NBFA’s view, the combined SunTrust and BB&T would be too large and complex to be regulated by the FDIC. The FDIC currently regulates two banks with assets over \$100 billion. Those two are BB&T with \$219 billion and Discover with \$108 billion.<sup>56</sup> Of the

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<sup>55</sup> *Community Reinvestment Act Performance Evaluation: Branch Banking and Trust Company*, FDIC, 43 (Jan. 17, 2017), [https://www5.fdic.gov/CRAPES/2017/09846\\_170117.PDF](https://www5.fdic.gov/CRAPES/2017/09846_170117.PDF).

<sup>56</sup> Kenneth H. Thomas, *BankThink Fed, not FDIC, should regulate a merged BB&T-SunTrust*, *American Banker* (Feb. 13, 2019) <https://www.americanbanker.com/opinion/fed-not-fdic-should-regulate-a-merged-bb-t-suntrust>; *Details and Financials — Institution Directory*, FDIC (Dec. 31, 2018) <https://www5.fdic.gov/idasp/advSearchLanding.asp> (search active institutions with assets greater than \$100,000,000,000).

remaining 28 banks with over \$100 billion in assets, 19 are regulated primarily by the Office of Comptroller of the Currency (“OCC”), including the top seven largest banks in the U.S. The remaining nine banks are regulated by the Fed.<sup>57</sup> The merged bank will have around \$442 billion in assets, \$301 billion in loans and it will be the sixth largest bank in the U.S.<sup>58</sup> The FDIC is not equipped to regulate a bank of this size and risks favorable treatment to the merged bank. As history has shown, where large banks receive favorable treatment from their regulators, consumers often suffer.<sup>59</sup>

The NBFA appreciates the Board’s consideration of these concerns, and would like to arrange a meeting to discuss them in greater detail.

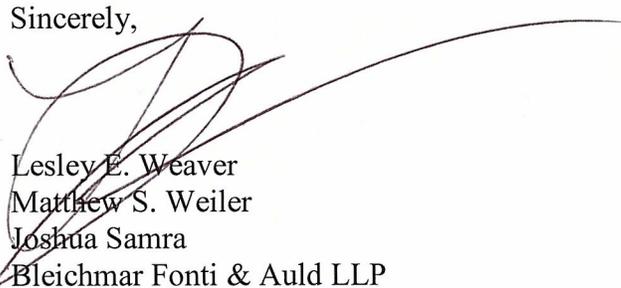
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<sup>57</sup> *Id.*

<sup>58</sup> *BB&T to buy SunTrust in all-stock deal worth \$66 billion that will create the sixth-largest US bank*, CNBC (Feb. 7, 2019) <https://www.cnbc.com/2019/02/07/bbt-and-suntrust-to-combine-in-an-all-stock-merger-of-66-billion.html>.

<sup>59</sup> *The Financial Crisis Inquiry Report*, Financial Crisis Inquiry Commission, xvii, (Jan. 2011), [https://cybercemetery.unt.edu/archive/fcic/20110310173545/http://c0182732.cdn1.cloudfiles.rackspacecloud.com/fcic\\_final\\_report\\_full.pdf](https://cybercemetery.unt.edu/archive/fcic/20110310173545/http://c0182732.cdn1.cloudfiles.rackspacecloud.com/fcic_final_report_full.pdf) (concluding that “widespread failures in financial regulation and supervision proved devastating to the stability of the nation’s financial markets.”)

Sincerely,



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