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Docket: OCC-2023-0017
Business Combinations Under the Bank Merger Act

Comment On: OCC-2023-0017-0001
Business Combinations Under the Bank Merger Act

Document: OCC-2023-0017-0011
International Bancshares Corporation

Submitter Information

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General Comment

Please see the attached comment letter on behalf of International Bancshares Corporation.

Attachments

International Bancshares Corporation

IBC
International Bancshares
Corporation

April 3, 2024

Via electronic submission: www.regulations.gov

Department of the Treasury
Office of the Comptroller of the Currency
Attn: Comment Processing – Docket ID OCC-2023-0017
400 7th Street SW
Suite 3E-218
Washington, DC 20219

Re: Comments on Notice of Proposed Rulemaking for Business Combinations Under the Bank Merger Act: Docket ID OCC-2023-0017; RIN 1557-AF24

Dear Sir or Madam:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 166 facilities and 256 ATMs, serving 75 communities in Texas and Oklahoma through five separately chartered banks ("IBC Banks") ranging in size from approximately $470 million to $8.9 billion, with consolidated assets totaling over $15 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the request for comment ("Request") issued by the Office of the Comptroller of the Currency ("OCC") regarding the revisions to the OCC's regulations governing the review of business combinations of national banks and Federal savings associations with other insured depository institutions that result in a national bank or Federal saving association under the Bank Merger Act ("BMA"). Specifically, the OCC is seeking comments on the proposed removal of the provisions related to expedited review and the use of streamlined applications for bank mergers, as well as a proposed appendix attempting to provide more transparency into the regulatory approval process.

IBC believes it is grossly inappropriate and highly problematic to remove the ability for certain mergers to undergo expedited review and the use of streamlined applications, and takes issue with many of the proposed factors included in the updated standards for the review of mergers under the BMA. Merger approvals have ground to a functional halt over the last decade, especially within the last five years. The only saving grace for many institutions wishing to undergo re-organizations and mergers has been the availability of the expedited and streamlined review process. Removing this process will hurt banks of all sizes and the financial industry as a whole. Small and mid-sized banks attempting to re-organize or merge in order to address dire financial outlooks or simply leverage additional resources to offer consumers more and better products and services at lower costs will face a brick wall at the OCC. Without the flexibility and availability of the

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streamlined and expedited review process, more banks may fail and small and mid-sized banks will face yet another hurdle to being able to act expeditiously to compete with large banks.

There is no doubt that the competitive landscape of the banking industry has changed substantially since the bank merger guidelines were adopted in 1995. IBC believes that it is appropriate for the OCC to update its approach to reviewing bank mergers. In fact, IBC has frequently joined in the laments of the entire banking industry in asking for increased clarity and transparency from the OCC regarding its merger approval process. But the proposed amendments and policy statement do not provide greater transparency or clarity into the process, and the removal of the streamlined and expedited review process will bring the already sluggish review process almost to a halt.

The Request lists six specific requests for comment. IBC has provided general comments and comments to the specific requests as noted below.

General Comments

Any change in the regulations governing bank mergers that serves to make mergers more difficult will have a disproportionately negative impact on community banks.

IBC opposes the removal of the expedited review process and the streamlined application process and takes umbrage at several of the newly proposed standards for the OCC's review of mergers under the BMA. The proposed changes will only serve to further penalize and weaken small and mid-sized banks while not doing enough to curb the growth of large banks, and continues to overlook the growing fintech industry and its effects on the banking industry. This proposed removal will result in additional regulatory costs and expenses for any mergers under the BMA, which are already costly and time-consuming processes, and will only serve to further impede healthy and often times necessary transactions, ultimately providing consumers, especially those in rural and underserved communities, with less choice. The merger process is already arduous and potentially damaging for institutions involved, especially when the target institution is in a vulnerable state, and further prolonging this regulatory limbo can result in no-win situations if mergers are ultimately denied. This will only increase the already lengthy and uncertain process, which will ward off potential buyers and prevent acquisitions that will result in a healthier market.

IBC is not saying that mergers of global systemically important banks or even very large banks should not undergo significant and thoughtful review by the OCC. But small and mid-sized institutions especially require access to a merger process that is efficient, quick, and easy to understand and complete. Small and mid-sized banks merge because one institution is facing financial hardship or two institutions wish to combine resources to better serve their communities and compete with large institutions. These banks do not seek to become banking behemoths; they are only trying to survive and provide their customers the best products and services they can in a safe and sound manner.

Specific Requests for Comment

1. Proposed removal of the expedited review procedures currently provided for under 12 C.F.R. 5.33(i).

The OCC contends that *any* business combination under the BMA should be considered a significant corporate transaction requiring thorough regulatory review. However, this position will serve only to stifle healthy competition and growth in the industry, and completely ignores the essential differences between large bank mergers and normal re-organizations and mergers between small and mid-sized banks. IBC is not saying that no bank merger is a significant transaction, but failing to acknowledge the difference between two top ten banks merging versus two small regional banks merging, or even one mid-sized bank holding company re-organizing assets among its subsidiary banks, borders on incredulous. Mergers are often vital for small and mid-sized banks, as the resulting institution typically has a stronger and broader capital base and liquidity position, more financial resources to improve customer products and services, and more resources to invest back into their communities, particularly in lower-income communities. The resulting bank is typically better able to compete with larger banks, and thus provides consumers a choice in their financial service provider that they otherwise would not have had. Larger institutions have more resources to allocate towards issues like cybersecurity and automating expensive and time-consuming regulatory compliance processes. More effective resource allocation capabilities and accessibility are boons to consumers, especially given that regional bank mergers allow smaller banks to remain competitive with the giants of the industry. Keeping smaller mergers available and allowing for expedited approvals is vital in maintaining and even increasing the number of viable competitors in a market and reducing financial stability risks. The current $50 billion limit for expedited review allows for community banks to have more flexibility in today's environment by giving them an opportunity to stay viable and provide local banking services to their communities while staying competitive with the ever growing behemoth of fintech companies (which federal regulators seem keen to turn a blind eye towards). Mergers are a primary tool available to community banks to compete against the massive banks who already dominate the market. Taking away the ability to use this tool in a cost-effective and efficient manner for smaller banks will serve only to increase the financial stability risk in the banking industries by continuing to impair the ability of small to mid-sized banks to remain competitive.

Small and mid-sized banks are often unable to meet regulatory and compliance obligations in profitable ways, especially considering certain asset thresholds that compound with even more regulatory obligations and oversight. Often smaller institutions will seek out merger partners as they approach certain asset thresholds because alone the institutions will not be able to bear the increased regulatory costs. Removing the expedited review process currently available under the BMA will serve only to penalize smaller and mid-sized institutions. Even now, the most optimistic approval timing is seven months, and the removal of the expedited process will serve to create an even larger backlog and prolong the already hobbling process. Some banks have recently waited years for final merger approval. While the inclusion of certain satisfactory indicators in the newly proposed appendix is a step in the right direction for providing clarity to the muddled review process, the complete removal of the expedited review process will do much more harm than good in the long run given the current state of regulatory review under the BMA. Banks are already adverse to mergers given the current scrutiny of proposed mergers, and any additional restrictions placed on mergers will serve only to curb their appetites for healthy mergers further. At the same time, federal regulators' ignorance of the effects and size of fintechs will serve only to strengthen their role in an already perilous environment for banks.

2. Proposed removal of 12 C.F.R. 5.33(j) regarding the OCC's streamlined business combination application.

Current 12 C.F.R. 5.33(j) provides for four scenarios that allow applicants to use a streamlined business combination application, and the OCC claims that there will be circumstances in which they will utilize their discretion to reduce the amount of information needed to be disclosed as part of the merger application process. In practice there will be almost no situation where regulators will ask for less information from banks with these proposed changes and given the current state of review for mergers. Removing the ability of banks to use the streamlined application process for largely vanilla and uncontroversial mergers would result in unnecessary cost and time for an already lengthy and costly process. Transactions that are eligible for the streamlined application process present minimal risk, and removing this option will serve only to harm small and mid-sized banks by requiring additional time and resources to complete the interagency BMA application, especially for applications to approve simple branch acquisitions.

The removal of the streamlined application will not serve to curb any mergers that the government and regulators are currently worried about, namely mergers between large institutions such as the pending Capital One and Discover merger, a merger that is set to create a bank with assets in excess of $600 billion. Low impact and low risk mergers between small and mid-sized institutions are often a necessity for the survival of these institutions that are already struggling to stay afloat in this increasingly unnecessarily regulated environment.

3. Proposed Section I of Appendix A

IBC Comment: None.

4. Proposed Section II of Appendix A

Section II of the proposed Appendix A lists the factors that are generally consistent with OCC approval for a merger, including that (i) the acquirer is well capitalized under 12 C.F.R. 5.3 of the BMA and the resulting institution will be well capitalized; (ii) the resulting institution will have total assets less than $50 billion in assets; (iii) the acquirer has a Community Reinvestment Act ("CRA") rating of Outstanding or Satisfactory; (iv) the acquirer has composite and management ratings of 1 or 2 under the Uniform Financial Institution Ratings System ("UFIRS") or ROCA rating system; (v) the acquirer has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System, if applicable; (vi) the acquirer has no open formal or informal enforcement actions; (vii) the acquirer has no open or pending fair lending actions, including referrals or notifications to other agencies; (viii) the acquirer is effective in combatting money laundering activities; (ix) the target's combined total assets are less than or equal to 50% of acquirer's total assets; (x) the target is an eligible depository institution as defined in 12 C.F.R. 5.3 the BMA; (xi) the proposed transaction clearly would not have a significant adverse effect on competition; (xii) the OCC has not identified a significant legal or policy issue; and (xiii) no adverse comment has raised a significant CRA or consumer compliance concern.

It also discusses several factors that would indicate regulatory concerns, including (i) the acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance; (ii) the acquirer has a UFIRS or ROCA composite or management rating of 3 or worse; (iii) a consumer compliance rating of 3 or worse; (iv) the acquirer is a global systemically important banking organization, or subsidiary thereof; (v) the acquirer has an open or pending Bank Secrecy Act/Anti-money Laundering enforcement or fair lending action, including referrals or notification to other agencies; (vi) failure by the acquirer to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner; or (vi) multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

IBC Comment: Of particular importance from the list of factors set forth above in the first paragraph of this Item 4 are items (ii) and (ix), which relate to the size of the resulting institution and the "mergers of equals" factor. IBC agrees that the $50 billion asset threshold should be presumed to not invoke any regulatory concerns as a result of a merger. This threshold is appropriate to allow mergers of two small or mid-sized institutions, and the indication that any merger below this threshold would not invoke any ire from regulators is a welcome one, as community banks should be allowed with as much flexibility to enter into mergers as possible in order to remain viable in today's economic environment. Permitting these types of mergers and allowing smaller and mid-sized institutions to combine in order serve larger swathes of customers in their community with better and cheaper financial products and services will allow them to remain competitive in an environment awash with large banks and the ever present fintech companies.

Factor (ix) however, is an unnecessary and worrisome inclusion that seems to undermine factor (ii). While the OCC lists these as factors that are indicative of approval, and states that the absence of one will not necessarily be dispositive, the presence of this factor on the list indicates a strong disfavor of mergers of equals. Mergers of equals make up a large portion of total deals and often times are a necessity for smaller and mid-sized banks who must merge to stay competitive in the market place. With the combined removal of the streamlined application process and the expedited review process, the OCC's indication that it disfavors mergers of equals will serve to stifle beneficial, and often necessary, transactions. Further, penalizing small and mid-sized banks that are vital to their communities would be yet another glaring example of regulatory discrimination that will serve only to decrease in the number of these institutions and reduce competition in the market. The vast increase in regulatory oversight in the past few decades with the Dodd Frank Act, the PATRIOT Act, the beneficial ownership rule, and other mandatory reporting requirements have further alienated and disadvantaged small and mid-sized banks who disproportionately must allocate valuable resources to deal with these regulatory burdens in order to stay afloat in the marketplace. Often times mergers between smaller institutions are necessary in order for the institutions to continue operating in a safe and sound manner in an environment deluged with regulatory requirements. Larger institutions are able to weather these regulatory and market changes due to economies of scale, and unregulated and unchecked fintechs are unaffected by the flood of regulations thrown at the banking industry. Because of this, IBC believes the factor (ix) should not be considered during the OCC's review of a transaction.

While there are several issues with the factors that the OCC has suggested promulgating, IBC is supportive of the inclusion of the global systemically important banking organization factor. Limiting mergers for larger global systemically important banks and making it easier for community and regional banks to merge should be the ultimate goal of the OCC's proposed regulations and this factor shows that the OCC is, while misguided in some areas, still attempting this goal.

5. Proposed Section III of Appendix A

IBC Comment: None.

6. Proposed Section IV of Appendix A

Section IV discusses the OCC's consideration of the individual financial resources, managerial resources, and future prospects factors. Proposed Section IV provides that the OCC would holistically consider these factors, and highlights several characteristics of an acquirer that would indicate the OCC is less likely to approve a proposed merger, including (i) having an unsatisfactory supervisory record, (ii) has experienced rapid growth, (iii) has engaged in multiple acquisitions with overlapping integration periods, (iv) has previously failed to comply with past OCC licensing decisions or is functionally the target of an acquisition. The OCC also notes it will generally deny transactions that would result in an institution with "less than adequate capital, less than satisfactory management, or poor earnings prospects."

IBC Comment: The OCC's proposal for Section IV lists several factors that many followers of the BMA are already aware of, and more color should be provided as to the weight given to each of the negative factors provided. The OCC proposals indicate that transactions between two healthy institutions will not seemingly receive as much scrutiny as others, but it is precisely these transactions where the target is not healthy in the "grey zone" where more clarity is required in order to see through the regulatory cloud. Additionally regulatory delays in situations where the target is already on unstable ground can be disastrous when the need for acquisition by a healthy entity is vital to its survival, which can often be the case with smaller entities that serve rural communities that historically have fewer options available to them. Given the uptick in enforcement actions and Matters Requiring Attention in the past year, any additional insight into the OCC's consideration of the key indicators for a target's acquisition and indicators of course corrections or items that indicate steps that a target and the acquirer can take to obtain regulatory approval would be suggested to this section.

7. Proposed Section V of Appendix A

Section V would address the OCC's consideration of the impact of any proposed combination on the convenience and needs of the community and the likely impact on the community of the resulting institution after the transaction closes. Specifically the OCC is asking for specific comments on whether to specify communities in addition to Low-to-Moderate Income ("LMI") communities as part of these considerations.

IBC Comment: IBC believes that, in addition to LMI communities, the OCC should revise this Section to prioritize allowing mergers in rural and other small markets in order to preserve the financial viability of small and mid-sized community banks so that these (typically underserved) areas can continue to have a robust physical banking presence. Non-traditional and alternative financial institutions can offer increased access to banking services in these areas, but this typically comes with a loss of physical presence which can be incredibly detrimental to banking customers. Increased regulatory costs and burdens and the loss of non-interest revenue streams have forced many small and mid-sized banks to realize economies of scale through merger to remain economically viable and competitive. These mergers, while initially seemingly anticompetitive, often result in stronger financial institutions that are better able to meet compliance burdens and shoulder the related substantial costs associated with them, deploy technology, serve local households and small business with upgraded products and services, and compete with non-local, internet-based institutions that do not have a physical presence in rural and/or underserved areas. Small and mid-sized banks in rural and underserved markets will have to meet increasingly difficult hurdles in order to obtain regulatory approval for mergers under these new guidelines and the removal of the expedited approval process and streamlined applications will only increase the timeline for approval. IBC notes that the time between application and the approval or denial of a merger application has only increased in the past few years and many institutions are left in limbo for more than a year on the status of their proposed mergers. This uncertainty is costly and dangerous, as institutions must continue on with their operations throughout the process with no clear end in sight for the merger approval or denial. In addition, long and time consuming approval processes negatively impact the institutions involved because the lasting uncertainty fuels personnel losses and customer defections.

A merger between smaller, rural-based institutions can be more easily declined by a regulator even though it would result in a stronger local bank that is better able to serve its community and improve its service offerings. In the case of a merger of large, urban-based institutions, the surviving institution may simply divest a few branches in order to receive an anti-competitive regulatory blessing, but the overall banking system becomes more concentrated and more systemically risky. The OCC must consider the difference between large banks entering into mergers who are only moving to solidify their already imposing dominance in the market versus small and mid-sized banks who must merge in order to remain solvent because of the ballooning costs of regulatory compliance.

8. Proposed Section VI of Appendix A

Section VI would provide additional details regarding the public comment considerations regarding the OCC's decision to hold a public meeting and potential extensions of the comment period.

IBC Comment: While IBC welcomes public comments and believes the communities opinion on proposed mergers is important to consider, it strongly opposes the proposal that the OCC should be allowed to extend the comment period based on their own conjecture that extenuating circumstances exist. This inclusion is a clear overreach on the part of the OCC, which seeks to add an even greater time period for its already lengthy review process. The thirty-day comment period provided for is already a sufficient length of time for any interested parties to make their voices heard, the OCC should not be given *carte blanche* to unilaterally increase the time period for comments for a process that already regularly takes over a year.

Thank you for the opportunity to share IBCs views on these matters.

INTERNATIONAL BANCSHARES CORPORATION

Judith Wawroski

Judith I. Wawroski, Executive Vice President Corporate Financial Accounting