

Memorandum of Understanding
among
the Department of Justice,
the Board of Governors of the Federal Reserve System,
the Federal Deposit Insurance Corporation, and
the Office of the Comptroller of the Currency
Regarding Executive Order 14036 on
Promoting Competition in the American Economy

I. Purpose and Scope

- A. Executive Order 14036 on Promoting Competition in the American Economy, dated July 9, 2021, encourages the United States Attorney General, in consultation with the Chairman of the Board of Governors of the Federal Reserve System (“Board”), the Chairperson of the Federal Deposit Insurance Corporation (“FDIC”), and the Comptroller of the Currency (“OCC”) to “review current practices and adopt a plan, not later than 180 days after the date of this order, for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956 (Public Law 84-511, 70 Stat. 133, 12 U.S.C. 1841 *et seq.*) that is in accordance with the factors enumerated in 12 U.S.C. 1828(c) and 1842(c).” To facilitate the consultation contemplated by the Executive Order, the Department of Justice (“DOJ”), Board, FDIC, and OCC (each individually an “Agency” and, collectively, “Agencies”) enter into this Memorandum of Understanding (“MOU”) to share information regarding the Agencies’ competitive analysis of mergers and acquisitions under the aforementioned statutes.

II. Non-Public Information

- A. When one of the Agencies provides Non-Public Information pursuant to this MOU to one, some or all of the other Agencies (hereafter such Agency providing such information shall be designated a “Providing Agency” and any such Agency or Agencies receiving such information shall be designated a “Receiving Agency”), the Receiving Agency shall presume the information so provided to be confidential Non-Public Information, and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Agency designates otherwise in writing.
- B. For purposes of this MOU, “Non-Public Information” means any information shared pursuant to this MOU, including any confidential supervisory information of the Board, pursuant to 12 C.F.R. Part 261, Subpart C, non-public OCC information pursuant to the 12 C.F.R. Part 4, Subpart C, and exempt information of the FDIC pursuant to 12 C.F.R. Part 309. Such Non-Public Information includes the information itself, in any form (including written, oral or electronic), and any document to the extent it contains such information. Non-Public Information does not include information that a Providing Agency has designated as public information.

III. Protecting the Confidentiality of Non-Public Information

- A. All Non-Public Information transferred from the Providing Agency to the Receiving Agency remains the records of the Providing Agency. The Receiving Agency shall maintain the confidentiality of the Non-Public Information and, except as specifically provided in this Section III, or with the written approval of the Providing Agency, will not disclose or otherwise make public any Non-Public Information to a third party.

- B. Unless otherwise authorized in writing by the Providing Agency, Non-Public Information may be shared only with officials and employees of the Receiving Agency (including, for the Board, staff of the Federal Reserve Banks) who have a need to know the information in the performance of their official work duties consistent with applicable law. The Receiving Agency will establish and maintain such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any Non-Public Information obtained from the Providing Agency. All officials and employees of a Receiving Agency with whom Non-Public Information is shared must comply with the terms of this MOU. The Receiving Agency will promptly notify the Providing Agency in the event of an unauthorized disclosure of the Providing Agency's Non-Public information, including identifying, where possible, any recipient of information outside of the Receiving Agency or Providing Agency.

- C. If a Receiving Agency receives a legally enforceable request or demand from a third party for Non-Public Information of a Providing Agency including, but not limited to a Congressional request or Freedom of Information Act request, the Receiving Agency will:
 - 1. unless prohibited by law, promptly notify the Providing Agency in writing of such request or demand for any Non-Public Information of the Providing Agency and furnish to the Providing Agency copies of any such demand or request as well as any documents related thereto;

 - 2. afford the Providing Agency a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith;

 - 3. consistent with law, notify the requestor seeking the Non-Public Information that requests for such information should be made directly to the Providing Agency in accordance with applicable law;

 - 4. cooperate fully with the Providing Agency to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Agency's behalf that may reasonably be requested to be asserted, including

withholding Non-Public Information from disclosure and not disclosing except as provided in this Section III.

5. consent to an application by the Providing Agency to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to Non-Public Information shared pursuant to this MOU.
- D. Nothing in this Agreement shall prevent a Receiving Agency from complying with a legally valid and enforceable order of a court of competent jurisdiction or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Congress with authority to require and receive the Non-Public Information or testimony thereto if:
1. In the case of a legally valid enforceable subpoena of a court or order by a court of competent jurisdiction, the Receiving Agency reasonably determines that efforts to quash, appeal or resist compliance with the subpoena or order would be unsuccessful; attempts, to the extent practicable, to secure a protective order to preserve, protect and maintain the confidentiality of the Non-Public Information and any privileges associated therewith; and immediately notifies the Providing Agency of its intent to comply with the subpoena or order and of any actions taken in compliance with the subpoena or order; or
 2. In the case of a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the Non-Public Information, the Receiving Agency (a) advises the Committee that the Non-Public Information being produced belongs to the Providing Agency and requests that the Committee obtain the Non-Public Information directly from the Providing Agency; and (b) uses its best efforts to obtain the commitment or agreement of the Committee that it will maintain the confidentiality of the information.
- E. The Agencies intend that sharing of information that is subject to this MOU will not constitute public disclosure, nor will it constitute a waiver of the work-product doctrine, confidentiality or any privilege or disclosure exemption applicable to such information including, but not limited to, deliberative and consultative materials. The Agencies recognize that disclosure of information pursuant to this MOU is subject to the provisions of 12 U.S.C. § 1821(t) and that disclosure will not in and of itself waive any privileges.

IV. Other Matters

- A. The MOU shall become effective on the date of the latest signature date on this document and shall remain effective until terminated by all Agencies, and may be revised or modified, upon agreement. Any Agency may withdraw from the MOU by providing thirty (30) calendar days written notice to the other Agencies. Withdrawal of one Agency from the MOU will not affect the application of the MOU to the other Agencies. In the event an Agency withdraws from this MOU, or this MOU is terminated by all Agencies, Non-Public

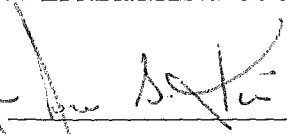
Information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU.

- B. This MOU and all of its terms and conditions are not intended to relieve either a Providing Agency or a Receiving Agency of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a, or the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422.
- C. This MOU does not create legally binding obligations on the Agencies and does not create any right enforceable against the Agencies or any of their officers, employees, or any other person. This MOU also does not confer upon any third-party the right or ability, either directly or indirectly, to obtain, suppress, or exclude any information, or to challenge the execution of a request under this MOU. This MOU does not modify the ability and responsibility of the Agencies to enforce their respective statutes and regulations.
- D. This MOU may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same agreement.
- E. Each Agency shall designate a primary contact person to facilitate communications between and among attorneys, economists, and technical experts of the Agencies, and to contact for purposes of notice under the MOU. As soon as practicable after execution of this MOU, each Agency will advise the other Agencies of the name, title, and contact information of this contact person. This contact information will be updated as appropriate.

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AGREED:

U.S. DEPARTMENT OF JUSTICE

By:  _____

Date: 12/9/2021

Name: Jonathan Kanter

Title: Assistant Attorney General

AGREED:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By: 

Date: November 30, 2021

Name: Mark E. Van Der Weide

Title: General Counsel

AGREED:

FEDERAL DEPOSIT INSURANCE CORPORATION

NICHOLAS
By: PODSIADLY Digitally signed by
NICHOLAS PODSIADLY
Date: 2021.12.03
12:46:17 -05'00' Date: _____

Name: Nicholas J. Podsiadly

Title: General Counsel

AGREED:

OFFICE OF THE COMPTROLLER OF THE CURRENCY

By: **Benjamin W. McDonough** Digitally signed by Benjamin W. McDonough
Date: 2021.11.23
11:28:20 -05'00' Date: _____

Name: Benjamin W. McDonough

Title: Chief Counsel