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ResearchReport

People's United Bank's Acquisition of Farmington Bank Under Federal and State Law

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Issue

Explain the federal and state statutory framework for People's United Bank's acquisition of Farmington Bank.

Summary

On June 19, 2018, People's United Bank announced an agreement to acquire First Connecticut Bancorp — the holding company for Farmington Bank — and then merge Farmington Bank into People's United. Generally, mergers and acquisitions of banks or bank holding companies are governed by federal and state law and require review and approval from both federal and state regulators.

At the federal level, the People's United-Farmington Bank merger and acquisition requires approval by the federal Office of the Comptroller of the Currency (OCC), the resulting bank's primary federal regulator. (Other types of bank mergers and acquisitions may require approval by a different federal regulatory agency, such as the Federal Reserve's Board of Governors, based on the details of the transaction and the nature of the resulting bank.) At the state level, the People's United-Farmington Bank merger and acquisition requires approval by the Connecticut Department of Banking (DoB).

OCC approved the transaction on September 12, 2018. DoB issued an intent not to disapprove on September 25, 2018. For more general information on the federal-state dual-banking system, see OLR Issue Brief 2017-R-0018: Federal Preemption and Oversight in Banking.

Federal Law

Under federal law, People's United Bank must obtain written approval for its acquisition of Farmington Bank from the OCC (12 U.S.C. 1828(c)(2) and 12 U.S.C. 215 & 215a). On June 21, 2018, People's United Bank filed the federal Bank Merger Act application for this transaction.

Generally when reviewing such a merger application, the OCC must consider the:

1. proposed transaction's impact on competition, the convenience and needs of the community, and the stability of the United States' banking system;
2. effectiveness of the new institution to combat money laundering; and
3. ability of the acquiring institution to comply with the federal Community Reinvestment Act and other federal law.

Federal law prohibits OCC from approving a merger that, among other things, would result in a monopoly or substantially lessen competition. In certain circumstances, it also requires OCC to appraise shares of the bank being merged or acquired.

OCC approved the People's United-Farmington Bank transaction on September 12, 2018.

State Law

State law generally requires, a person acquiring a Connecticut chartered bank to file an acquisition statement with DoB detailing the proposed transaction, including the acquiring bank's capital and compliance with federal banking law. The parties may proceed with the acquisition unless the banking commissioner (1) calls a public hearing on the matter within 30 days after the filing or (2) disapproves the acquisition within 60 days after the filing. If, within the 60-day period, the commissioner issues an "intent not to disapprove" notice, the transaction may also proceed. When considering whether to disapprove an acquisition, the commissioner must consider several statutory criteria (see below).

According to DoB, People's United Bank filed the final acquisition statement on August 23, 2018. The DoB issued an intent not to disapprove notice on September 25, 2018 (CGS §§ 36a-184 & -185).

Acquisition Statement

By law, the acquisition statement must include the acquirer's background and identity. In addition, it must also provide the following:

1. total funds and consideration, including their source, that will be used to make the acquisition;
2. any transactions used to obtain funds specifically for the acquisition, including any associated arrangements and people;
3. the acquirer's complete audited financial statements for the past five years, and for the past 90 days, an audited or unaudited statement;
4. plans the acquirer may have to liquidate, sell, merge, consolidate, or materially change the acquired bank;
5. number of shares or amount of security that will be acquired, including the terms of the agreement and a statement assessing the proposal's fairness;
6. information on contracts or arrangements the acquirer may have with any of securities of the bank or holding company being acquired, including any security purchases in the prior year;
7. recommendations the acquirer may have made in the prior year about purchasing securities in the bank or holding company being acquired;
8. copies of all proposed offers, requests, contracts, or agreements relating to the acquisition; and
9. any additional information the commissioner requires.

The banking commissioner may waive any of these requirements. Any material change in the facts listed above must be filed immediately with the commissioner.

Disapproval Criteria

The law requires the commissioner to disapprove an acquisition under certain circumstances. It gives him the discretion to disapprove an acquisition under other circumstances.

Specifically, the commissioner must disapprove an acquisition if:

1. it involves voting securities or convertible voting securities of a bank that has been operating for less than five years;
2. the acquirer or its affiliates would control at least 30% of Connecticut depository institutions;

3. the commissioner does not find that the acquirer (a) has a record of compliance with the federal Community Reinvestment or (b) has, with certain exceptions, no ratings other than "outstanding" on its most recent applicable community reinvestment performance evaluation (a bank with ratings other than "outstanding" must submit a plan to provide adequate services to meet the banking needs of all community residents, including low- and moderate-income residents, to the commissioner);

4. the acquiring bank or individual does not have a record of compliance with applicable anti-money-laundering laws and regulations.

In making these determinations, the commissioner must consider whether the:

1. acquiring bank's investment and lending policies and other services are consistent with safe and sound banking practices and will benefit the Connecticut economy;

2. proposed acquisition will substantially lessen competition; and

3. acquirer, if it will own 25% or more of the acquired bank, has sufficient capital and managerial resources to meet statutory capital requirements and operate the bank in a safe and sound manner.

The commissioner may disapprove the acquisition if he finds that:

1. the acquirer, after the acquisition, would be unable to satisfy the requirements necessary for a certificate of incorporation or certificate of authority in order to conduct the same type and extent of banking it was authorized to conduct prior to the acquisition;

2. the acquirer's financial condition may jeopardize the acquired bank's financial stability or prejudice certain interest holders whose interests are not being acquired;

3. the terms of the tender or exchange offer are unfair and inequitable to security holders;

4. any plans to liquidate, sell, merge, or make material changes to the acquired bank are unfair to deposit or security holders;

5. the acquirer's competence, experience, and integrity may negatively impact depositors or security holders; or

6. possible adverse effects clearly outweigh the acquisition's public benefits.

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