



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ
GENERAL COUNSEL

June 12, 2017

Laura R. Biddle, Esq.
Counsel
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004

Dear Ms. Biddle:

This is in response to your letter, dated June 2, 2017, and received on June 6, to the Federal Reserve Bank of New York requesting a waiver from an application requirement under the Bank Holding Company Act of 1956, as amended (“BHC Act”),¹ for Sussex Bancorp, Rockaway, New Jersey, a bank holding company, to acquire Community Bank of Bergen County, NJ (“Community Bank”), Maywood, New Jersey, a state member bank.

The purpose of the proposed transaction is to facilitate the merger of Community Bank with and into Sussex Bancorp’s wholly owned subsidiary state non-member bank, Sussex Bank, Rockaway, New Jersey. The transaction would occur as follows: (1) Sussex Bancorp would acquire 100 percent of the outstanding common stock of Community Bank and (2) immediately thereafter, Community Bank would merge with and into Sussex Bank, with Sussex Bank as the resulting entity (“Bank Merger”). You have indicated that the transaction steps would occur in immediate succession on the same business day and that Community Bank would not operate Sussex Bank as a separate entity.

Section 3 of the BHC Act and the Board’s Regulation Y require the approval of the Board before a bank holding company may acquire direct or indirect ownership or control of more than 5 percent of the voting shares of a bank.² Through the transaction described above, Sussex Bancorp would acquire control of Community Bank.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842(a); 12 CFR 225.11.

Accordingly, Sussex Bancorp would be required to obtain the Board's approval under section 3 of the BHC Act and Regulation Y before acquiring Community Bank.

In certain circumstances, however, in order to avoid duplication of regulatory review by federal banking regulators, the Board's rules provide that a bank holding company seeking to acquire shares or control of a bank need not obtain the Board's prior approval. Specifically, section 225.12(d)(2) of the Board's Regulation Y provides that a bank holding company need not obtain the Board's approval if the transaction is subject to review by a federal banking agency under section 18(c) of the Federal Deposit Insurance Act ("the Bank Merger Act"),³ and meets certain other criteria.⁴ Your proposal meets all of the applicable criteria, and Sussex Bancorp has provided all necessary information.

The proposed Bank Merger requires the prior approval of the Federal Deposit Insurance Corporation ("FDIC") under the Bank Merger Act.⁵ In acting on the merger proposal, the FDIC must consider the impact the acquisition would have on competition, the financial and managerial resources and future prospects of the combined organization, the convenience and needs of the communities served by Sussex Bank and Community Bank, the institutions' records of performance under the Community Reinvestment Act, the institutions' effectiveness in combating money laundering activities, and risks to the stability of the United States banking or financial system.⁶ These criteria are substantially similar to the criteria the Board would consider under section 3 of the BHC Act.⁷

Additionally, at no time would Community Bank operate as a separate subsidiary bank of Sussex Bancorp. Following the transaction, the separate corporate existence of Community Bank would cease, and Sussex Bank would continue to operate as a state non-member bank. Under these circumstances, review of the transaction under section 3 of the BHC Act would be duplicative of the review under the Bank Merger Act.

³ 12 U.S.C. § 1828(c).

⁴ 12 CFR 225.12(d)(2).

⁵ 12 U.S.C. § 1828(c). Sussex Bank filed a Bank Merger Act application dated June 2, 2017, with the FDIC, requesting prior approval of the Bank Merger. Sussex Bancorp has provided the Board with a copy of the application.

⁶ 12 U.S.C. §§ 1828(c)(5) & (11), 2902(3)(E), 2903(a)(2).

⁷ See 12 U.S.C. § 1842(c); 12 CFR 225.13.

Based on a review of these and other facts presented, the Legal Division believes that no regulatory purpose would be served by requiring Sussex Bancorp to file a formal application under section 3 of the BHC Act. The Legal Division, therefore, would not recommend that the Board take action to require a filing of a formal application by Sussex Bancorp in connection with the transaction described above. This opinion is subject to the receipt by Sussex Bancorp, Sussex Bank, and Community Bank of all other necessary regulatory approvals and compliance with any terms and conditions that may be imposed upon approval of the proposal.

This opinion is based on all the facts and representations presented to Federal Reserve staff. Any material change in those facts or representations should be communicated immediately to Federal Reserve staff and may cause this opinion to be reconsidered. This opinion is limited to this proposal and does not apply to any other transaction.

If you have any questions regarding this matter, please contact Steve Bowne at (202) 452-3900 or Jason Shafer at (202) 728-5811, of my staff.

Sincerely,

A handwritten signature in blue ink that reads "Scott G. Allen". The signature is written in a cursive style with a large, looped "A" at the end.

cc: Federal Deposit Insurance Corporation