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Via EZFile

December 16, 2025

R. Ryan Schilling,
Federal Supervisor,
Federal Reserve Bank of Cleveland,
150 East Fourth Street,
Cincinnati, OH 45202

Re: Fifth Third Bancorp, Cincinnati, Ohio, Proposed Acquisition of Comerica Incorporated, Dallas, Texas

Dear Mr. Schilling:

On behalf of our clients, Fifth Third Bancorp ("Fifth Third") and Fifth Third Financial Corporation ("Fifth Third Financial" and, together with Fifth Third, collectively, the "Applicant"), we respectfully submit to the Federal Reserve Bank of Cleveland (the "Cleveland FRB") a response to the anonymous comment letter (the "Anonymous Letter"), dated December 8, 2025. The Anonymous Letter purports to relate to the application to the Board of Governors of the Federal Reserve System (the "Board" or the "Federal Reserve") and the Cleveland FRB pursuant to Sections 3(a)(3) and (3)(a)(5) of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), and the Board's Regulation Y promulgated thereunder (the "Application") regarding the Applicant's proposed acquisition of Comerica Incorporated ("Comerica"), and its subsidiary banks, Comerica Bank and Comerica Bank & Trust, National Association. We request the Federal Reserve to reject the Anonymous Letter, both because of its anonymity and because it does not address the relevant statutory issues.

Anonymous Nature of the Comment

The Federal Reserve has expressed serious reservations about anonymous comments. 12 C.F.R. § 262.25(d)(1)(ii) directs that a protest that requests a public meeting, such as the Anonymous Letter, "should identify the protestant".

In addition, an anonymous comment is inconsistent with the Federal Reserve's regulations in that it inherently prevents a private meeting. 12 C.F.R. § 262.25(c) provides that "[w]hen a timely protest . . . is received, the Federal Reserve

may arrange a meeting between the applicant and protestant to clarify and narrow the issues and provide a forum for the resolution of differences between the protest and the applicant". Further, the public meeting provision (12 C.F.R. § 262.25(d)) explains that "[i]n most instances, the determination to order a public meeting will be made after a private meeting has been held". There obviously cannot be any private meeting between parties if one of the parties purposefully obfuscates its identity. Anonymity thereby undermines regulatory efficiency and a sound regulatory process.

The Anonymous Letter does not identify the protestant or the protestant's interest in the Application or even attempt to provide any reasons for the anonymity. In these circumstances, the Anonymous Letter's request for a public meeting should be summarily denied, and the Anonymous Letter should be given no weight in the Federal Reserve's consideration of the Application.

Failure to Address Statutory Factors

A leading judicial decision, a number of subsequent Federal Reserve decisions and Federal Reserve regulations make clear that issues of the type raised in the Anonymous Letter are not appropriately considered by the Federal Reserve in the application process.

In Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973), the plaintiff applicant challenged a Federal Reserve decision that rejected the application on the basis of the purported unfairness of the transaction consideration. The court rejected the Board's position:

> Thus, it is apparent that the Board's concern has been and is now concentrated on the protection of the interests of the minority stockholders. Nothing in relation to the Board's concern in this regard indicates any lessening of competition, tendency to create a monopoly, restraint of trade, anticompetitive effect, or want in *"meeting the convenience and needs of the community to be served,"* the sole criteria laid down by Congress. 12 U.S.C.A. § 1842(c)(2), *supra*. (Emphasis ours). These are the specific standards prescribed by Congress.
>
> [. . .]
>
> Had Congress intended stock acquisition price offers to be a relevant factor for consideration by the Federal Reserve Board in its deliberations relative to applications for

> approval of bank holding company acquisitions, it was fully capable and able to so declare.

The Federal Reserve's attempt to defend its position under the rubric of the "public interest" was likewise rejected:

> Presumably, everything the Federal Reserve Board and this court does is in the "public interest". The selective process of the Board in relying upon the broad maxim or reference to the "public interest" lends no aid, and in fact blends with confusion in the decisional process here involved. Congress . . . spelled out the specific factors to be considered by the Board relating thereto.

The court further explained that these issues should be resolved in the different forums that were available and pertinent.

> Issues as to the reasonableness or inequality of stock purchases must be decided upon the basis of the law of contracts, or such other principles of law as may be applied in a forum competent to adjudicate the issue between the parties thereto.[1]

Since Western Bancshares, the Federal Reserve has faithfully followed that mandate. A particularly relevant example is C-B-G, Inc., 85 Fed. Res. Bull. 335, n.8 (1999), where the protestant was a minority shareholder of the acquired institution, Peoples National Corporation ("Peoples"). The protestant there made the same type of fiduciary duty and self-dealing claims as are repeated in the Anonymous Letter, and these claims were categorically rejected by the Federal Reserve.

> Protestant also expressed concern that the directors and officers of Peoples may not have properly discharged their fiduciary duties to shareholders of Peoples in considering the proposal and alleged that the management of Peoples had engaged in improper self-dealing activity . . . The Board notes that the courts have concluded that the limited jurisdiction to review applications under the BHC Act does not authorize the Board to consider matters relating only to

[1] One of those forums is the shareholder meetings, where the totality of the shareholder bodies can decide whether they agree with the positions espoused in the Anonymous Letter.

> corporate governance and the proper compensation of shareholders. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). These are matters of state and federal securities law and of state corporate law and may be raised before a court with the authority to provide Protestant with adequate relief, if deemed appropriate.

Likewise in Juniata Valley Financial Corp, 92 Fed. Res. Bull. C171, n.15 (2006):

> Commenters [management of the acquired bank] expressed concern that by entering into an agreement to sell the shares, the Selling Director might not have properly discharged his fiduciary duties to shareholders of Liverpool Bank…In addition, Commenters expressed concern that both the proposed sale price for the shares and the size of Juniata's proposed ownership would have a negative effect on the value of Liverpool Bank's shares. The Board notes that the courts have concluded that the limited jurisdiction to review applications under the BHC Act does not authorize the Board to consider matters relating only to corporate governance and the proper compensation of shareholders. *See* Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973). These matters involve state and federal securities laws and state corporate law that may be raised before a court with the authority to provide shareholders with adequate relief, if appropriate.

The same point is made in Valley View Bancshares, Inc., 85 Fed. Res. Bull. 64, n.3 (1999):

> The limited jurisdiction of the Board to review applications under the specific statutory factors in the BHC Act does not authorize the Board to consider matters relating to general corporate governance, such as shareholder relations and the adequacy of shareholder compensation. See Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

Other Federal Reserve decisions have made clear that matters under other state or federal laws are not subject to resolution in an application process. For example,

in The Chase Manhattan Corporation, 83 Fed. Res. Bull. 905, n.24 (1997), the Federal Reserve held:

> The Board previously has stated that its limited jurisdiction to review applications under the BHC Act does not authorize the Board to adjudicate disputes involving an applicant that arise under statutes administered and enforced by another agency in areas such as employment discrimination.

In addition, the Federal Reserve's regulations, 12 C.F.R. § 262.25(d)(1)(ii), provide:

> Objections to approval of an application must relate to the factors that the Board is authorized to consider in acting on an application. Generally, these factors relate to the financial and managerial resources of the companies and banks involved, the effects of the proposal on competition, and the convenience and needs of the communities to be served by the companies and banks involved.

The Anonymous Letter represents the archetypical example of protests that the courts and Federal Reserve have held are outside the jurisdiction of the Federal Reserve under the BHC Act. At the outset, over 95% of the pages of the protest consists of publicly disclosed presentations and a state court complaint prepared by HoldCo Asset Management, LP ("HoldCo") that relate to a purported breach of fiduciary duties by directors of Comerica – not the Applicant – and the purported unfairness of the purchase price. As noted above, these exact types of complaints have been routinely rejected by the courts and Federal Reserve on multiple occasions.[2] They do not relate to any of the statutory factors that the Federal Reserve is authorized to evaluate under the BHC Act. It is notable, indeed conclusive, that the Anonymous Letter fails to provide any analysis of competitive factors, the financial and managerial resources of the Applicant or the convenience and needs of the community.

On numerous occasions, the Anonymous Letter refers to litigation initiated by HoldCo that involves allegations of "malfeasance" by Comerica and its chief executive officer. But, as the Federal Reserve and the courts have pointed out, the courts – not the Federal Reserve – are the appropriate forum to resolve such claims.

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[2] Indeed, the Anonymous Letter acknowledges that it is not a typical comment: "Historically, public comments submitted in typical bank mergers focus on CRA branch closures, etc."

Likewise, the Anonymous Letter refers to "[m]ultiple complaints [that] have been filed with the SEC and the U.S. Dept. of Treasury". The Applicant is not aware of these complaints or who filed them. But, in any event, the very fact that they were filed with another agency explains fundamentally why they are not a proper matter for consideration by the Federal Reserve in the context of an application. If these complaints were filed by HoldCo, an interesting question arises as to how the writer of the Anonymous Letter is aware of them if that writer, as asserted in the Anonymous Letter, "has no affiliation with HoldCo in any way".

In the same vein, the Anonymous Letter alleges that "the U.S. Senate Finance Committee has also issued information requests regarding Fifth Third's involvement with the Direct Express program and is currently engaged in an active investigation of these matters." If this assertion were accurate, it would again illustrate why the Federal Reserve should refrain from becoming involved in matters under consideration by another government authority under a different statutory scheme. We are also constrained to note that the "Senate Finance Committee Committee [sic] letter" cited in the Anonymous Letter is addressed to and focused on the conduct of a third party and only contains a passing, non-substantive, reference to Fifth Third. Further, the purported Senate Finance Committee letter is not by the Committee but is signed by its ranking member and another Senator.

Specific Requests in the Anonymous Letter

The Anonymous Letter makes three "requests". None is valid.

(1) Extension of the public comment period. The public comment period will have lasted for over 40 days from the filing of notice of the Application because of a delay in the publication in the Federal Register. That is more than sufficient time for comments to be made.

(2) Public hearing. As noted above, the Anonymous Letter writer's insistence on anonymity should, under the Federal Reserve's regulations, lead to a summary denial. Moreover, the Anonymous Letter provides no meaningful substantive reasons for a public hearing.

(3) Compelled delay in the shareholder meetings. The Anonymous Letter requests that the Federal Reserve compel Comerica and Fifth Third to delay their respective shareholder meetings. Such an action would be well beyond the Federal Reserve's statutory authority.[3]

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[3] The Anonymous Letter also urges the Federal Reserve to delay action on the Application. As the Federal Reserve has recognized, delay is harmful to all

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The Anonymous Letter's requests and argument lack merit, contravene the Federal Reserve's regulations and exceed the Federal Reserve's statutory authority. They should be rejected.[4]

Sincerely,

H. Rodgin Cohen

cc: Jason Almonte
(Office of the Comptroller of the Currency)

Comerica 175 Coalition

Matthew R. Lee
(Inner City Press / Fair Finance Watch)

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relevant constituencies, the banks themselves, employees, customers and communities, as well as stockholders.

4 Apparently the same commenter wrote three additional anonymous letters, two letters dated December 12, 2025 and one untimely letter dated December 15, 2025. We will not respond further to those letters because they add nothing new and because they contain the same fatal flaws as the Anonymous Letter.