



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

SCOTT G. ALVAREZ  
GENERAL COUNSEL

March 30, 2017

Jennifer R. McCain, Esq.  
Maynard, Cooper & Gale  
1901 Sixth Avenue North  
Regions Harbert Plaza  
Suite 2400  
Birmingham, AL 35203

Dear Ms. McCain:

This is in response to your letter, dated March 16, 2017, and received on March 20, 2017, to the Federal Reserve Bank of Atlanta requesting a waiver from an application requirement under the Bank Holding Company Act of 1956, as amended (“BHC Act”),<sup>1</sup> for Progress Financial Corporation (“Progress Financial”), Huntsville, Alabama, a bank holding company, to acquire First Partners Financial, Inc. (“FP Financial”), a bank holding company, and thereby indirectly acquire its wholly owned subsidiary state non-member bank, First Partners Bank (“FP Bank”), both of Birmingham, Alabama.

The purpose of the proposed transaction is to facilitate the merger of FP Bank with and into Progress Financial’s wholly owned subsidiary state non-member bank, Progress Bank & Trust (“Progress Bank”), Huntsville, Alabama. The transaction would occur as follows: (1) FP Financial would merge with and into Progress Financial, with Progress Financial as the resulting entity and (2) simultaneously therewith, FP Bank would merge with and into Progress Bank, with Progress Bank as the resulting entity (“Bank Merger”). You have indicated that the transaction steps would occur on the same business day and that Progress Financial would not operate FP Bank as a separate entity.

Section 3 of the BHC Act and the Board’s Regulation Y require the approval of the Board before the merger or consolidation of bank holding companies.<sup>2</sup>

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<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> 12 U.S.C. § 1842(a); 12 CFR 225.11.

Progress Financial is merging with FP Financial and acquiring ownership of FP Bank. Accordingly, Progress Financial would be required to obtain the Board's approval under section 3 of the BHC Act and Regulation Y before merging with FP Financial.

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 merge with another bank holding company 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 receive 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"),<sup>3</sup> and meets certain other criteria.<sup>4</sup> Your proposal meets all of the applicable criteria, and Progress Financial 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.<sup>5</sup> 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 Progress Bank and FP 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.<sup>6</sup> These criteria are substantially similar to the criteria the Board would consider under section 3 of the BHC Act.<sup>7</sup>

Additionally, at no time would FP Bank operate as a separate subsidiary bank of Progress Financial. Following the transaction, the separate corporate existence of FP Bank would cease, and Progress Bank would continue to operate as a state non-

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<sup>3</sup> 12 U.S.C. § 1828(c).

<sup>4</sup> 12 CFR 225.12(d)(2).

<sup>5</sup> 12 U.S.C. § 1828(c). Progress Bank filed a Bank Merger Act application with the FDIC dated March 13, 2017, requesting prior approval of the Bank Merger. Progress Financial has provided the Board with a copy of the application.

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

<sup>7</sup> See 12 U.S.C. § 1842(c); 12 CFR 225.13. FP Bank has a branch office in Florida. The acquisition of FP Bank satisfies the criteria under section 3(d) of the BHC Act. See 12 U.S.C. § 1842(d).

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.

Based on a review of these and other facts presented, the Legal Division believes that no regulatory purpose would be served by requiring Progress Financial 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 Progress Financial in connection with the transaction described above. This opinion is subject to the receipt by Progress Financial, Progress Bank, FP Financial, and FP 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 Has Rahamatalli at (202) 452-2243, of my staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott G. Alley". The signature is written in black ink and is positioned below the word "Sincerely,".

cc: Federal Deposit Insurance Corporation