



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

July 3, 2017

Robert L. Carothers, Jr., Esq.
RSA Battle House Tower
11 North Water Street, Suite 1200
Mobile, Alabama 36602

Dear Mr. Carothers:

This is in response to your letter to the Federal Reserve Bank of Atlanta, dated June 22, 2017, and received on June 26, requesting a waiver from an application requirement under the Bank Holding Company Act of 1956, as amended (“BHC Act”),¹ for FirstBanc of Alabama, Inc. (“FirstBanc”), Talladega, Alabama, a bank holding company, to acquire Swann Bancshares, Inc. (“Swann”), a bank holding company, and Swann’s wholly owned state nonmember bank subsidiary, Bank of Wedowee, both of Wedowee, Alabama.

The purpose of the proposed transaction is to facilitate the merger of Bank of Wedowee with and into FirstBanc’s wholly owned state nonmember bank subsidiary, First Bank of Alabama (“First Bank”), Talladega, Alabama. The transaction would occur as follows: (1) Swann would merge with and into FirstBanc, with FirstBanc as the resulting entity; (2) immediately thereafter, Bank of Wedowee would merge with and into First Bank, with First Bank as the surviving entity (“Bank Merger”). You have indicated that the transaction steps would occur on the same day and that FirstBanc would not operate Bank of Wedowee 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 and 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, FirstBanc would merge with Swann and acquire control of Bank of Wedowee.

¹ 12 U.S.C. § 1841 *et seq.*

² 12 U.S.C. § 1842(a); 12 CFR 225.11.

Accordingly, FirstBanc would be required to obtain the Board's approval under section 3 of the BHC Act and Regulation Y.

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 or acquire 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 FirstBanc has provided all necessary information.

The 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 Bank of Wedowee and First 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 Bank of Wedowee operate as a separate subsidiary of FirstBanc. Following the transaction, the separate corporate existence of Bank of Wedowee would cease, and First Bank would continue to operate as a state nonmember 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). First Bank filed a Bank Merger Act application dated June 22, 2017, with the FDIC, requesting prior approval of the Bank Merger. FirstBanc has provided the Board with a copy of the Bank Merger Act application.

⁶ 12 U.S.C. §§ 1828(c)(5) and (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 FirstBanc 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 FirstBanc in connection with the transaction described above. This opinion is subject to the receipt by FirstBanc, First Bank, Swann, and Bank of Wedowee 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 Evans Muzere at (202) 452-2621, of my staff.

Sincerely,

Richard M. Ashton
Acting General Counsel

cc: Federal Deposit Insurance Corporation