



May 16, 2023

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Chairman
Federal Deposit Insurance Corporation
550 17th St. N.W.
Washington, D.C. 20429

Josh Stein
Attorney General
North Carolina Department of Justice
114 W. Edenton St.
Raleigh, N.C. 27603

Katherine Bosken
Commissioner
North Carolina Office of the Commissioner of
Banks
316 W. Edenton St.
Raleigh, N.C. 27603

Dear Mr. Gruenberg, Mr. Stein, and Ms. Bosken,

We write today to express grave concern regarding recent events at an institution under your shared regulatory and supervisory purview—First Carolina Bank (FCB) of Rocky Mount, North Carolina—and to request immediate action to prevent consumer harm.

On March 22, 2023 the financial technology company BM Technologies (BMT, previously “BankMobile”) announced a “Deposit Processing Services Agreement (DPSA)” with FCB, a state-chartered Federal Deposit Insurance Corporation (FDIC) member bank.¹ Key terms of this deal remain secret,² but in general it will involve BMT acquiring, interacting with, and creating mobile applications for customers to offer them financial products such as BMT-branded deposit accounts, with FCB providing the underlying banking services.³ BMT will cover the cost that FCB faces to administer these accounts, and in return FCB will remit to BMT a portion of certain fees that consumers incur.⁴ These fees will include interchange charges facilitated by FCB’s

¹ <https://finance.yahoo.com/news/bm-technologies-secures-bank-partner-203000113.html>

² <https://seekingalpha.com/article/4590469-bm-technologies-inc-bmtx-q4-2022-earnings-call-transcript> (wherein BMT co-CEO Luvleen Sidhu says, “[W]hat we’re kind of standing by where for competitive reasons, we’re not going to provide the actual pricing”). It is not clear whether FCB management will also keep the specific terms of this deal secret.

³ https://www.sec.gov/ix?doc=/Archives/edgar/data/1725872/000121390023022099/ea175536-8ka1_bmtech.htm

⁴ Id.



exemption, due to its relatively small size, from the statutory cap on these penalties instituted in the so-called “Durbin Amendment” to the Dodd-Frank Act.⁵

The initiation of this partnership will involve the transfer of an estimated \$500 million in deposits related to BMT’s work in the campus banking space from another FDIC member institution to FCB.⁶ Management teams from both BMT and FCB have indicated that this transfer requires regulatory approval.⁷

For at least the reasons enumerated below, the partnership contemplated under the DPSA stands to undermine sound banking practices and to put both students and other consumers at risk. The undersigned organizations request that your agencies intervene in the proposed DPSA, reject the related transfer of \$500 million in deposits to FCB, and use your respectively broad authorities to initiate careful scrutiny of the past and present conduct of both FCB and BMT. Such action would reflect North Carolina and the FDIC’s longstanding commitment to consumer protection, and would help reduce risk across the banking sector.

Our concerns with the partnership that the DPSA would create include the following:

- ***The specific terms of this deal amount to BMT and FCB imposing a junk fee bonanza on students and mom-and-pop college town retailers.*** The agreement discussed here is driven by BMT’s desire to partner with a bank that is small enough to be exempt from the Durbin Amendment’s cap on interchange revenue, thereby allowing BMT to skim off a greater share of the cash that changes hands when students pay for basic necessities. This assertion is not speculation: BMT complained as early as 2017 that the company would be “unable to profitably operate” without a Durbin-exempt partner,⁸ made clear upon going public that it intended to grow by “partnering with Durbin Amendment-exempt banks,”⁹ and underscored when announcing the partnership with FCB that “the company

⁵ <https://www.law.cornell.edu/uscode/text/15/1693o-2>. Note that this amendment does “not apply to any [company] that, together with its affiliates, has assets of less than \$10,000,000,000” and that FCB most recently reported having only slightly more than \$2 billion in assets.

<https://banks.data.fdic.gov/bankfind-suite/financialreporting/details/35530?establishedEndRange=4%2F19%2F2023&establishedStartRange=01%2F01%2F1792&inactiveEndRange=4%2F19%2F2023&inactiveStartRange=01%2F01%2F1970&incomeBasis=YTD&institutionType=banks&limitEstablishedDate=false&limitInactiveDate=false&reportPeriod=20221231&reportType=asset-s-liabilities-and-capital&unitType=%24> [<https://perma.cc/LLZ7-77ZD>]

⁶ <https://www.bizjournals.com/triangle/news/2023/03/24/first-carolinas-bmtx-partnership-deposits.html>

⁷ <https://www.firstcarolinabank.com/assets/files/vnjZeigE>;

<https://seekingalpha.com/article/4590469-bm-technologies-inc-bmtx-q4-2022-earnings-call-transcript>

⁸ <https://www.wsj.com/articles/digital-financial-startup-bankmobile-to-be-sold-for-175-million-1488974542>

⁹ https://www.sec.gov/ix?doc=/Archives/edgar/data/1725872/000121390021038656/ea144695-s1a3_bmtech.htm



expects to return to profitable growth” after a period of stagnation “[d]ue in large part” to the “higher interchange revenues” that the deal would provide.¹⁰ Accordingly, it is no exaggeration to describe the proposed BMT-FCB deal as an effort by the two companies to bolster their bottom lines by increasing the day-to-day costs that students and merchants in college towns bear when undertaking transactions that they would have entered into anyway, not by offering any differentiated or uniquely useful services. The FDIC and the NCOCB should be skeptical about how such a scheme could possibly advance beneficial or responsible banking practices.

As you know, interchange fees are charges that merchants pay when a customer uses a credit or debit card at their store. These fees act as one of many tolls that merchants bear to use the various systems that move money from buyers to sellers. In a hypothetical transaction outlined by the U.S. Government Accountability Office, for example, a consumer buys \$100 of goods using a debit card, and the merchant receives \$98.57 after \$1.43 of transaction fees are incurred along the way.¹¹ Among the fees included in the example are 10 cents to the network provider (almost always Visa or Mastercard), 30 cents to the merchant’s bank, and \$1.03 paid to the consumer’s card issuer.¹² This latter fee is the interchange fee.

Activists,¹³ scholars,¹⁴ and lawmakers¹⁵ have complained for years that these high fees are set anticompetitively, that they diverge from the true cost of facilitating payments, and that they lead to both higher prices for consumers and diminished profits for small retailers. In an effort to address these problems, Congress passed the so-called “Durbin Amendment” to the Dodd-Frank Act in 2010, which generally authorized the Federal Reserve Board to create regulations to ensure that interchange fees are “reasonable and proportional to the cost incurred by the [debit card] issuer with respect to the transaction” for banks with assets over \$10 billion.¹⁶ The Federal Reserve Board published these rules

¹⁰ <https://seekingalpha.com/article/4590469-bm-technologies-inc-bmtx-q4-2022-earnings-call-transcript>

¹¹ https://www.everycrsreport.com/files/20170516_R41913_c12d16726b033967d969a0e147ecab9b61d95c64.html

¹² Id.

¹³ <https://www.judiciary.senate.gov/imo/media/doc/Mierzwinski%20testimony.pdf>,

<https://www.govinfo.gov/content/pkg/CHRG-110hhrg36785/html/CHRG-110hhrg36785.htm>

¹⁴

<https://www.bostonfed.org/publications/research-department-working-paper/2020/distributional-effects-payment-card-pricing-merchant-cost-pass-through-united-states-canada.aspx>,

<https://www.propublica.org/article/factchecking-industrys-interchange-fee-claims>

¹⁵ <https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-his-debit-card-swipe-fee-amendment>

¹⁶ <https://www.law.cornell.edu/uscode/text/15/1693o-2>



in 2011, limiting interchange fees per transaction for covered institutions to 21 cents plus .05 percent of the transaction value.¹⁷

The Durbin Amendment proved extremely effective where it applies, reducing the junk fees that large banks levy via interchange by as much as \$14 billion per year.¹⁸ But it also created a massive business opportunity for banks with assets below the \$10 billion threshold, which could continue to charge higher interchange fees.¹⁹ A cottage industry subsequently opened of fintechs developing flashy consumer-facing tools for which Durbin-exempt partner institutions would provide underlying banking services, with both sides of the partnership sharing in the inflated interchange revenue that the exemption to the Durbin Amendment allowed them to maintain.²⁰

The BMT-FCB deal is just another instance of bank-fintech dealmaking along these lines, and it is every bit as concerning as similar partnerships that have preceded it. Millions of students who might soon use a card operated under the proposed BMT-FCB deal and countless small shops in college towns across the country may be about to grapple with a surge in interchange-related costs. Data from the Federal Reserve Board show that interchange fees are up to three times higher for Durbin-exempt institutions than for non-exempt ones,²¹ and BMT's existing disclosures show that the company extracts \$185 in revenue per year per account.²² In North Carolina, where there are more than 560,000 college students,²³ BMT's growth could mean more than \$103 million of junk fee revenue per year driven in part by inflated interchange costs.²⁴

The extent to which BMT's business model involves simply skimming off more from consumers and retailers than the company's competitors are allowed to is striking. Consider the average highly active user of a BMT account, who the company notes

¹⁷ <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20110629a.htm>

¹⁸ <https://www.federalreserve.gov/econresdata/feds/2014/files/201477pap.pdf#page=34>

¹⁹ <https://ramp.com/blog/how-the-durbin-amendment-sparked-fintech-innovation>

²⁰ Id.

²¹ <https://www.federalreserve.gov/paymentsystems/regii-average-interchange-fee.htm> (considering the dual-message segment)

²² <https://seekingalpha.com/article/4590469-bm-technologies-inc-bmtx-q4-2022-earnings-call-transcript>. ("Revenue for 90-day active accounts was \$185 for 2022. . . ." Note that BMT's disclosures are limited, and it is not obvious how much of the \$185 figure is attributable to interchange. However, it is likely a substantial portion.)

²³ <https://www.univstats.com/states/north-carolina/student-population/>

²⁴ Based on North Carolina's student population of 561,984 people and the assumption of \$185 per account, as reported by BMT.

See supra <https://www.univstats.com/states/north-carolina/student-population/>,

<https://seekingalpha.com/article/4590469-bm-technologies-inc-bmtx-q4-2022-earnings-call-transcript>



spends roughly \$17,700 per year on debit transactions.²⁵ For these users, many of whom are likely students, BMT's ability to charge higher interchange rates than institutions subject to the Durbin Amendment could mean the difference between roughly \$106 dollars and about \$212 in interchange fees per year.²⁶ These added fees offer students no obvious benefit beyond what they would enjoy if they used a card from a Durbin-covered institution. In North Carolina, those interchange charges could amount to almost \$60 million per year, all while being equally pointless.²⁷

Of course, students would not have to bear those charges directly—merchants, including small local retailers near colleges, would. Many of North Carolina's largest universities, such as Appalachian State University, are in small college towns, making it unlikely that local shops could diversify away from new costs associated with student-facing business.²⁸ The result will be a cycle of stores attempting (likely unsuccessfully) to recoup those newfound costs through price hikes that hurt students, all so that BMT can pad its fleeting profits.²⁹ After all, interchange fees are already the second largest operational cost for small retailers after labor (that is, more than utilities or rent).³⁰ As the situation worsens, costs for both merchants and students will only continue to inflate.

It is not clear why the FDIC, North Carolina Office of the Commissioner of Banks (NCOCB), or the North Carolina Department of Justice (NCDOJ) would allow such an economically pointless junk fee bonanza to arise. Instead, your respective agencies should stand up for students and small businesses by intervening in the DPSA's consummation and initiating strong new supervision of these firms.

- ***BMT faces managerial deficiencies and a legacy of predatory conduct that render it unlikely to meet prevailing standards for banks' third-party risk management.*** In its guidance on managing the risks that banks might face when partnering with third parties,

²⁵ <https://www.sec.gov/Archives/edgar/data/1725872/000121390023023190/0001213900-23-023190-index.htm>

²⁶ Extrapolation based on backhand rates for Durbin-exempt and non-exempt institutions cited by JPMorgan CEO Jamie Dimon. <https://reports.jpmorganchase.com/investor-relations/2020/ar-ceo-letters.htm>

²⁷ Estimate using the marginal cost of interchange fees cited above (\$106) and the entire student population of North Carolina. See <https://reports.jpmorganchase.com/investor-relations/2020/ar-ceo-letters.htm>,

<https://www.univstats.com/states/north-carolina/student-population/>

²⁸ <https://www.collegesimply.com/colleges/rank/colleges/largest-enrollment/state/north-carolina/>

²⁹ <https://www.creditslips.org/creditslips/2010/06/interchange-theory.html>

³⁰ <https://www.judiciary.senate.gov/imo/media/doc/Kantor%20testimony.pdf#page=9>. Note that interchange fees can amount to up to 19 percent of merchant profits. See https://hispanicleadershipfund.org/wp-content/uploads/2022/05/HILF_Report_RewardingTheRich-InterchangeFees_03May22.pdf#page=3



the FDIC states that “[i]nstitutions should maintain . . . adequate quality control over those products and services provided through third-party arrangements in order to minimize exposure to potential significant financial loss, reputation damage, and supervisory action.”³¹ The agency enumerates a wide range of items that banks should consider when evaluating third parties for exposure along these lines, including their “[e]xperience and ability in implementing and monitoring the proposed activity,” their “business reputation,” and their “financial viability.”³² In addition, the FDIC makes clear that “[a]ppropriate corrective actions, including enforcement actions, may be pursued for deficiencies related to a third-party relationship. . . .”³³ Both the NCOCB³⁴ and the NCDOJ³⁵ have a long history of affirming similarly high standards for the types of companies that can access the state’s retail financial markets through bank partnerships.

BMT’s track record throws into question how it could possibly meet the FDIC, the NCOCB, or the NCDOJ’s expectations of competence and compliance for banks’ third parties. A review of the company’s history is instructive. BMT was founded in 2015 as a subsidiary of Customers Bank, an FDIC member bank headquartered in Pennsylvania.³⁶ BMT nominally aimed to provide a first-of-its-kind mobile-based banking experience, but it appeared from its inception to have been in no small part a platform for Customers Bank CEO Jay Sidhu to elevate his daughter and protégé, Luvleen Sidhu.³⁷ The younger Sidhu was named CEO of BMT in 2020,³⁸ and the company spun off from Customers Bank in 2021 by going public via a merger with a Special Purpose Acquisition Company sponsored by Jay Sidhu and his son.³⁹

³¹ <https://www.fdic.gov/news/financial-institution-letters/2008/fil08044a.html>

³² Id.

³³ Id.

³⁴ See, e.g., <https://casetext.com/case/in-re-advance-am>

³⁵ See, e.g., <https://ncdoj.gov/attorney-general-josh-stein-sues-to-protect-vulnerable-north-carolinians-from-predatory-lenders/>, <https://ncdoj.gov/attorney-general-josh-stein-sues-to-protect-north-carolinians-from-predatory-payday-lenders/>

³⁶ See <https://www.asian-voice.com/Volumes/2015/24-January-2015/Customers-Bank-launches-BankMobile>. Note that this link is to a reproduction of the press release, which BMT appears to have taken down. See

https://www.bmtx.com/wp-content/uploads/2015/07/BMLaunchFinal_1.14.15.pdf

³⁷ Note, for example, that even before she was named as CEO, Luvleen was the only executive quoted in the press release announcing BMT’s creation. See Id.

³⁸

<https://www.globenewswire.com/news-release/2020/01/07/1967337/0/en/BankMobile-Promotes-Co-Founder-Luvleen-Sidhu-to-CEO.html>

³⁹

<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/spac-to-acquire-bankmobile-at-140m-enterprise-value-59800036>;

<https://www.globenewswire.com/news-release/2021/01/05/2153562/0/en/BM-Technologies-Inc-f-k-a-Megalith-Financial-Acquisition-Corp-Completes-Business-Combination-with-BankMobile-Technologies-Inc.html>



BMT entered the campus banking space, which now constitutes a significant portion of its business, in 2016 via the acquisition of the large campus debit card provider Higher One.⁴⁰ Just a year before, the Federal Reserve Board had required Higher One to pay \$25 million dollars in fees and penalties to address claims that it had deceptively driven students toward its own, high-cost account options at the expense of potentially preferable alternatives, and that it had failed to provide students with a range of other key information so as to support its own bottom line.⁴¹ By 2022, the CFPB would report that BMT controlled 70 percent of the campus card market.⁴² However, the CFPB would also indicate that BMT had begun engaging in many of the same deceptive, fee-extracting tactics for which the Federal Reserve Board had previously cited Higher One.⁴³ In particular, the CFPB’s 2022 campus banking report found the following:

- ***BMT deceptively directed students into more costly account options when cheaper options were available.*** The CFPB noted that the “BankMobile Vibe Checking Account, marketed directly to students when they visit [a] ‘Refund Choices’ webpage hosted by BankMobile, includes a monthly fee of \$2.99, while a comparable account listed on the same page, the BankMobile Vibe UP Checking Account, does not include a monthly fee.”⁴⁴ For students, even fees of that relatively small scale can be devastating.⁴⁵
- ***BMT nickel-and-dimed students by sneaking unfairly structured fees into its accounts.*** BMT’s campus banking accounts are primarily used as a destination for surplus financial aid dollars that students have left over after tuition and other fees. But while BMT discloses that students will face a fee if their “Vibe” account balance falls below \$300, it hides in its fine print that *financial aid dollars do not count toward that minimum balance.*⁴⁶ Students are likely to learn about this contractual trick only after incurring a fee.

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<https://m.canadianinsider.com/customers-bancorp-inc-completes-acquisition-of-student-checking-and-refund-disbursement-business>

⁴¹ <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20151223a.htm>

⁴² https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf#page=40

⁴³ Id.

⁴⁴ https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf#page=7

⁴⁵ https://protectborrowers.org/wp-content/uploads/2022/04/SBPC_US-PIRG-EF_Junk-Fees.pdf#page=9

⁴⁶ https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf#page=34



- ***BMT illegally and incorrectly claimed that students would have to wait longer for refunds if they did not use the company's products.*** Regulations implementing the Higher Education Act stipulate that companies like BMT must use neutral language to present students' options for the accounts they can use to disburse their surplus financial aid dollars, and that these firms must not delay students' disbursements regardless of which of those options students ultimately choose.⁴⁷ BMT, however, was caught incorrectly stating in student-facing marketing materials that the use of other companies' accounts would lead to a delay of "1-2 business days" for students' refunds.⁴⁸ The CFPB noted this practice was "similar to prior marketing practices identified as problematic by the 2014 [ED Inspector General] report" that led to the creation of the very regulations that BMT was now violating.⁴⁹

To date, BMT does not appear to have commented on these accusations or indicated any intention to change its conduct. Instead, BMT has continued struggling with basic aspects of corporate life, raising the question of whether it could actually address the issues cited above if it wanted to. For example, the company filed its financial disclosures late in the first quarter of 2021,⁵⁰ the fourth quarter of 2021,⁵¹ and all but the final quarter of 2022.⁵² Just this morning, BMT announced that it would do the same for the first quarter of 2023.⁵³ BMT brought on a new co-CEO in late March 2023 to right the ship,⁵⁴ but it is unclear how deep the rot may run. Four days after it announced its new co-CEO, for example, the company disclosed that the New York Stock Exchange had cited it for misclassifying certain incentive compensation awards under the exchange's rules.⁵⁵ BMT announced its proposed partnership with FCB only slightly more than a week before this admission.⁵⁶ Meanwhile, the company's stock has fallen more than 80 percent from its high, and the firm has struggled to maintain profitability.⁵⁷

⁴⁷ [https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-K/section-668.164#p-668.164\(d\)\(4\)](https://www.ecfr.gov/current/title-34/subtitle-B/chapter-VI/part-668/subpart-K/section-668.164#p-668.164(d)(4))

⁴⁸ https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf#page=39

⁴⁹ https://files.consumerfinance.gov/f/documents/cfpb_college-banking-report_2022.pdf#page=38

⁵⁰ <https://www.sec.gov/Archives/edgar/data/1725872/000121390021027120/0001213900-21-027120-index.htm>

⁵¹ <https://www.sec.gov/Archives/edgar/data/1725872/000121390022020591/0001213900-22-020591-index.htm>

⁵² <https://www.sec.gov/Archives/edgar/data/1725872/000121390022027096/0001213900-22-027096-index.htm>,

<https://www.sec.gov/Archives/edgar/data/1725872/000162828022023023/0001628280-22-023023-index.htm>,

<https://www.sec.gov/Archives/edgar/data/1725872/000121390022072568/0001213900-22-072568-index.htm>

⁵³ <https://www.sec.gov/Archives/edgar/data/1725872/000121390023040013/0001213900-23-040013-index.htm>

⁵⁴ <https://www.sec.gov/Archives/edgar/data/1725872/000121390023022929/0001213900-23-022929-index.htm>

⁵⁵ <https://www.sec.gov/Archives/edgar/data/1725872/000121390023025625/0001213900-23-025625-index.htm>

⁵⁶ <https://www.sec.gov/Archives/edgar/data/1725872/000121390023022099/0001213900-23-022099-index.htm>

⁵⁷ <https://www.macrotrends.net/stocks/charts/BMTX/bm-technologies/net-income>,

<https://finance.yahoo.com/quote/BMTX/history?p=BMTX>



The U.S. Department of Education is on the cusp of revising and likely strengthening the regulations that surround the campus card market,⁵⁸ making it possible that many of BMT’s worst practices could come under additional scrutiny or be rendered entirely illegal (to the extent that they are not already). But in light of the failures outlined above, it is not obvious that heightened regulation will eliminate BMT’s bad behavior, and instead it is entirely possible that these changes will lead only to new compliance risks. It is also possible that the outlawing of certain harmful practices could undercut BMT’s viability as a business, making the partnership contemplated under the DPSA only more risky.

We urge you to carefully consider whether BMT—a firm that has grappled profoundly since its inception with poor conduct, and whose leadership appears unwilling or unable to rein it in—could possibly fit within prevailing standards for prudent third-party risk management, or within North Carolina regulator’s longstanding vision for consumer protection. In addition, noting that each of the issues cited above raises clear concerns under North Carolina’s prohibition on “unfair or deceptive acts or practices in or affecting commerce,”⁵⁹ we urge the NCDOJ to carry out its duty under state law to investigate the CFPB’s troubling findings⁶⁰ and to use to the fullest extent possible its power to compel examination of BMT’s in-state actions to date.⁶¹

- ***FCB is likely unready for the massive influx of novel, out-of-state business that this partnership would involve.*** As noted above, the proposed partnership with BMT would bring \$500 million in new deposits to FCB.⁶² That sum alone would expand FCB’s deposit base by almost 25 percent,⁶³ marking a continuation of the breakneck growth that FCB has undertaken over the past handful of years. FDIC data indicate that FCB has doubled its assets since 2020 and *quadrupled* them since 2019,⁶⁴ all while *tripling* its

⁵⁸ <https://www.ed.gov/news/press-releases/department-education-announces-public-hearings-higher-education-rulemaking>

⁵⁹ N.C. Gen. Stat. § 75-1.1.

⁶⁰ N.C. Gen. Stat. § 75-9.

⁶¹ N.C. Gen. Stat. § 75-10.

⁶² <https://businessnc.com/first-carolina-may-add-500m-in-deposits-in-fintech-deal/>

⁶³ Id.

⁶⁴

<https://banks.data.fdic.gov/bankfind-suite/FinancialReporting/details/35530?establishedEndRange=4%2F11%2F2023&establishedStartRange=01%2F01%2F1792&inactiveEndRange=4%2F11%2F2023&inactiveStartRange=01%2F01%2F1970&incomeBasis=YTD&institutionType=banks&limitEstablishedDate=false&limitInactiveDate=false&reportPeriod=20221231&reportType=assets-liabilities-and-capital&unitType=%24>



number of branches since just August 2020.⁶⁵ Moreover, the partnership with BMT would involve FCB engaging with students—a demographic with which FCB appears to have no special expertise⁶⁶—in regions of the country where FCB appears to have absolutely no prior experience. It is not obvious how FCB could possibly have in place the risk management infrastructure necessary to grapple with such a broad and sudden expansion of the size and scope of its business.

Instead, it appears that FCB is walking down the well-trod but risk-riddled path of rapid bank growth through partnerships with financial technology (fintech) companies. Many smaller banks have taken this road before, and most have learned that it is ultimately extremely dangerous. Consider the recent example of Blue Ridge Bank (BRB), an FDIC member bank headquartered in Virginia.⁶⁷ BRB more than tripled its assets from the end of 2019 to the end of 2022 in part by building out a sprawling “banking as a service” business for fintech companies, a line of work essentially similar to what FCB is proposing to do for BMT.⁶⁸ BRB’s partners varied from notorious student loan market participants⁶⁹ to companies that claimed to help foreign nationals create US-based bank accounts.⁷⁰ In 2021, the Office of the Comptroller of the Currency (OCC) delayed a merger that BRB had planned with another regional bank citing unspecified “regulatory concerns,”⁷¹ and by the summer of 2022 rumors swirled of “serious issues” in BRB’s risk controls.⁷² Finally, in September 2022 the OCC entered into a far-reaching “agreement” with BRB requiring the institution to overhaul its policies on third-party partnerships, get permission from the OCC in writing before entering into any new ones, and more.⁷³ This outcome underscores that BRB’s headfirst dive into fintech partnerships empowered it to

⁶⁵ <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/35530>

⁶⁶ It appears that the extent of FCB’s student-facing offerings amount to a single online calculator that borrowers can use to model repayment after putative student loan consolidation, even though FCB does not appear to offer a specific student loan consolidation product. See <https://www.firstcarolinabank.com/calculator/student-rolldown>

⁶⁷ https://protectborrowers.org/wp-content/uploads/2021/04/Letter_MentorWorks_OCC.pdf

⁶⁸

<https://banks.data.fdic.gov/bankfind-suite/FinancialReporting/details/35274?establishedEndRange=4%2F19%2F2023&establishedStartRange=01%2F01%2F1792&inactiveEndRange=4%2F19%2F2023&inactiveStartRange=01%2F01%2F1970&incomeBasis=YTD&institutionType=banks&limitEstablishedDate=false&limitInactiveDate=false&reportPeriod=20221231&reportType=assets-liabilities-and-capital&unitType=%24>

⁶⁹ <https://www.sec.gov/ix?doc=/Archives/edgar/data/842717/000095017023007265/brbs-20221231.htm>

⁷⁰

<https://www.businesswire.com/news/home/20210520005180/en/Aeldra-and-Blue-Ridge-Bank-Launch-Neobank-to-Expand-U.S.-Financial-Access-to-BRICS-Plus-Countries>

⁷¹ <https://www.bankingdive.com/news/virginia-banks-delay-merger-over-occ-concerns/609584/>

⁷² <https://fintechbusinessweekly.substack.com/p/as-regulatory-scrutiny-of-baas-grows>

⁷³ <https://www.sec.gov/ix?doc=/Archives/edgar/data/842717/000119312522236606/d375124d8k.htm>



veer off from maintaining sound banking practices. There is little reason to believe that FCB's attempt at this maneuver will end any differently.

Similarly, as you are no doubt aware, the FDIC recently sanctioned Utah's Transportation Alliance Bank (TAB) by decreasing its rating under the Community Reinvestment Act (CRA) to "needs to improve" due to the company's notorious rent-a-bank dealings.⁷⁴ CRA is an anti-redlining statute that has for decades helped ensure that banks are truly and even-handedly serving their communities.⁷⁵ The FDIC's downgrade of TAB came after advocates noted that the bank had been supporting predatory online puppy loans, car loans, and other personal loans with APRs of up to 189 percent through a deal with an online lender.⁷⁶ The downgrade—a rare move by the FDIC that represents a massive black eye for TAB—appears to reflect the agency's sense that TAB's embrace of its "banking-as-a-service" business led it to drift from truly serving its community as is expected under the law.⁷⁷ It is unclear whether FCB management has prepared at all to ensure that the bank's proposal for a sudden entrance into the nationwide campus card market—let alone an entrance via a partner as notorious as BMT—will not have a similar outcome.

Of course, these examples say nothing of the mischief and disaster that can arise even for larger and more sophisticated banking organizations that dive too quickly into the fintech space. The recent failures of Silicon Valley Bank, Silvergate Bank, Signature Bank, and First Republic Bank, as well as a recent enforcement action against Cross River Bank,⁷⁸ should be a warning for *any* bank considering engaging with untested technology firms. It should also be a warning for these organizations' regulators. Moreover, there is already immediate precedent for state regulators intervening in bank deals *involving BMT* after questions have arisen around whether such tie-ups reflect sound banking practices. In particular, before courting FCB, BMT offered \$23 million in 2021 to purchase Washington's state-chartered First Sound Bank.⁷⁹ First Sound had only \$150 million in assets, placing it well below the size threshold for Durbin exemption.⁸⁰ But the deal

⁷⁴ <https://www.fdic.gov/resources/bankers/community-reinvestment-act/monthly-list-of-examined-banks/2023/crafeb23.html>

⁷⁵ https://www.federalreserve.gov/consumerscommunities/cra_about.htm

⁷⁶ <https://www.nclc.org/resources/joint-letter-to-the-fdic-regarding-the-community-reinvestment-act-examination-of-tab/>

⁷⁷ <https://protectborrowers.org/fdic-must-weed-out-rent-a-bank-schemes/>

⁷⁸ <https://orders.fdic.gov/sfc/servlet.shepherd/document/download/0693d000007xESIAAM?operationContext=S1>

⁷⁹ <https://www.globenewswire.com/en/news-release/2021/11/15/2334085/0/en/BM-Technologies-Announces-Strategic-Merger-with-First-Sound-Bank.html>

⁸⁰ Id.



faltered in 2022 after regulators required BMT to resubmit a merger application to answer a series of pointed questions about the transaction.⁸¹ Both sides called off the deal later that year.⁸²

We urge the FDIC, the NCOCB, and the NCDOJ to carefully examine whether FCB is truly prepared to take on its proposed partnership with BMT, and to consider the extensive risks that will arise if it is not.

The concerns enumerated above underscore the grave risks that the FDIC, the NCOCB, and the NCDOJ would be taking in allowing the proposed partnership between FCB and BMT to move forward. On behalf of students, small businesses, and other consumers; in the interest of supporting sound banking practices; and with skepticism toward business models that are not viable unless their practitioners can impose junk fees on those who can afford them least, we urge you to take immediate action to prevent this unholy union.

Thank you for your time and consideration.

Sincerely,

Student Borrower Protection Center
US PIRG

⁸¹ <https://www.bankingdive.com/news/bm-technologies-first-sound-bank-nix-23m-merger-deal-fintech-luvleen-sidhu/639651/>

⁸² <https://www.yahoo.com/now/bm-technologies-announces-partner-bank-134000127.html>