August 24, 2021

Janet Kincaid
Deputy Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square
Suite 2300
San Francisco, CA 94105

RE: Change in Control, KMD Partners, LLC to acquire Liberty Bank, Inc.

Dear Ms. Kincaid:

We ask the FDIC not to approve the application from KMD Partners, LLC to acquire Liberty Bank, Inc. (Salt Lake City, Utah), including acquiring control of the bank.

The National Community Reinvestment Coalition (NCRC) consists of more than 600 community-based organizations, fighting for economic justice for almost 30 years. Our mission is to create opportunities for people and communities to build and maintain wealth. NCRC members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, fair housing, and civil rights groups, minority and women-owned business associations, and housing counselors from across the nation. NCRC and its members work to create wealth-building opportunities by eliminating discriminatory lending practices, which have historically contributed to economic inequality.

The Center for Responsible Lending (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 185,000 mostly low-income families through 65 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington and Wisconsin.

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

The change in control presents three fundamental problems:

First, Liberty Bank has itself demonstrated a poor record of meeting its community reinvestment obligations. Second, KMD Partners is the parent company of a high-cost lender, and the acquisition runs the risk of federally insured deposits being used for or in conjunction with risky predatory lending. Third, KMD may use the ability to export Utah's non-existent interest rate limits to other states in order to expand high-cost lending to places with interest rate caps that are below the rates that KMD's subsidiaries charge.

The FDIC should deny this application.

A. Liberty Bank has a poor record of meeting the needs and conveniences of the communities where it does business. The application filed for a change in control[1] does not include a CRA plan.

1. Liberty Bank has a poor community reinvestment record and has not met the needs in Salt Lake for financial services.

Liberty Bank received a "needs to improve" rating on its 2020 CRA performance evaluation (PE).[2]

Fewer than one percent of all institutions examined between 2013 and 2020 received a rating of "needs to improve." Only three institutions received the rating level below "needs to improve."[3]

In recent years, Liberty Bank has moved away from meeting credit needs in its community. At the end of 2017, the Bank reorganized its strategy to focus on many consumer loans to borrowers who sought to purchase "tiny homes." Since then, such loans have made up more than half of the Bank's overall loan

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[1] David S. Shorr. "Interagency Notice of Change in Control." Federal Deposit Insurance Corporation, May 28, 2021.

[2] Federal Deposit Insurance Corporation. "Community Reinvestment Act Performance Evaluation: Liberty Bank, Inc." Performance Evaluation. San Francisco, California, September 9, 2019. https://www7.fdic.gov/CRAPES/2019/26816_190909.PDF.

[3] Carolyn Duren and Nathaniel Melican. "Fed Proposal Could Encourage Banks to Improve CRA Ratings." S&P Global Market Intelligence, October 13, 2020. https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/fed-proposal-could-encourage-banks-to-improve-cra-ratings-60699424.

[4] We also note the exam did not include information on the income profile of borrowers who received a tiny home loan. The lack of that information concerns us, as by definition a CRA exam should determine how well a bank is meeting the needs and conveniences of LMI communities. It is all the more concerning that the exclusion occurred for the major product line of the bank.

activity. Even though Liberty operates in a sector with few competitors, it still has failed to put its deposits to full use. The bank had an average loan-to-deposit (LTD) ratio of 59.6 percent during the twenty quarters between September 2014 and June 2019. At the end of the period under examination, Liberty Bank's LTD was 45.5 percent. Except for home mortgage, almost all of its lending activity occurred outside its Salt Lake City assessment area. During the four years ending in 2018, Liberty Bank originated only 20 percent of its loans in the Salt Lake City MSA. All loans for "tiny homes" were made outside of the bank's assessment area.[4]

The general shift by the Bank away from small business and other credit needs in its local community to making loans for tiny homes outside of its assessment area has occurred even though these credit needs remain present. The PE notes that the primary unmet credit needs in Salt Lake are for affordable housing and small business loans.

2. The change in control application does not indicate how the bank's new leadership would improve on the bank's commitment to meeting the needs and conveniences of low- and moderate-income communities in the Salt Lake City MSA.

All applications to receive a charter must include a CRA plan. While such a rule does not exist for changes in control, the critical principle remains relevant and compelling: the privilege of a charter must only be granted to entities that have committed to meet the needs of the communities where they do business.

Banks must be held accountable; When they fail to receive a rating of satisfactory or greater, regulators should impose consequences, and preventing a bank from selling itself should be one of the levers they deploy.

B. By approving the application from KMD Partners, the FDIC would facilitate high-cost and abusive credit through the banking system.

1) Credit Ninja, the principal business of KMD Partners, is a high-cost installment lender. Credit Ninja holds state lending licenses in fourteen states, where it makes high-cost consumer installment loans. In Missouri, Credit Ninja charges up to 380 percent.[5] In Texas, where Credit Ninja arranges loans through a third-party relationship, the current interest rate on a 12-payment bi-weekly $500 loan is 470.1 percent.[6] The relationship between Credit Ninja loans that the planned bank loans is unclear, but the bank could be used to expand these or similar high-cost loans to other states, or to engage in bait-and-switch arrangements between the bank and Credit Ninja.

[5] Credit Ninja. “State Licenses.” Accessed August 4, 2021. https://www.creditninja.com/pages/state_licenses.

[6] Credit Ninja. “An Estimate of the Costs of a 12-Payment, Bi-Weekly $500 Loan.” Accessed August 4, 2021. https://www.creditninja.com/pages/state_licenses.

2) The proposed acquisition would pose the risk of creating an adverse effect on the Deposit Insurance Fund.

To the extent that KMD Partners intends to use insured deposits as a means to fund high-cost installment loans, that is inappropriate. The use of deposit insurance by an institution with such business practices creates a moral hazard.

High-cost installment loans result in high percentages of borrowers struggling or entering into default. A 2016 study on the performance of online installment loans noted that more than half of all online payday (high-cost) installment loan sequences experienced a default.[7] Additionally, half of the borrowers of these loans incurred an average of $185 in bank penalties because their accounts lacked sufficient funds for the loan payments.[8] By their very nature, loans with such high-interest rates -- where principal reduces extraordinarily slowly -- put borrowers in situations where they may not have the ability to repay their debts. Another study explained how high-rate installment lenders may actually prefer and seek out borrowers who will struggle with payments and eventually default.[9]

The use of deposits to fund these loans might jeopardize the financial stability of the bank and pose reputational risks. Similarly, it could put the interest of depositors, who are by definition risk-averse, in conflict with the interest of shareholders, who are risk-taking. The difference between the proposed model and a standard bank plan is one of degree – the differences in risk appetites are exceptionally different. Implementing regulations for the Federal Deposit Insurance Act encourage federal banking agencies to disapprove a proposed acquisition if it would adversely affect the Deposit Insurance Fund. 12 U.S.C 1817 (j)7(f) or it would not be in the interest of the depositors of the bank. 12 U.S.C. 1817 (j)7(d).[10]

C. KMD Partners could use the charter to facilitate high-cost lending at rates that exceed state interest rate caps.

Credit Ninja's website shows that it makes high-cost loans at rates in excess of 300 percent. While it currently makes its loans in 14 states, a bank charter would enable it to expand its high-cost lending across the nation. High-cost loans pose real and severe risks to consumers. Research has long shown they have devastating impacts on the financially vulnerable consumers high-cost lending targets. Moreover, though high-cost lenders often promise a ladder to financial inclusion, in reality they kick the ladder out from under borrowers and push the financial mainstream only further out of reach. These effects are

[7] Consumer Financial Protection Bureau. "Payday Loans, Auto Title Loans, and High-Cost Installment Loans: Highlights from CFPB Research." Consumer Financial Protection Bureau, June 2, 2016. https://files.consumerfinance.gov/f/documents/Payday_Loans_Highlights_From_CFPB_Research.pdf.

[8] Consumer Financial Protection Bureau. "CFPB Finds Half of Online Payday Borrowers Rack Up an Average of $185 in Bank Penalties," April 20, 2016. https://www.consumerfinance.gov/about-us/newsroom/cfpb-finds-half-of-online-payday-borrowers-rack-up-an-average-of-185-in-bank-penalties/.

[9] National Consumer Law Center. "Misaligned Incentives: Why High-Cost Lenders Want Borrowers Who Will Default." Washington, D.C., July 2016. https://www.nclc.org/issues/misaligned-incentives.html.

[10] Resources. "Federal Deposit Insurance Act: Section 7j," n.d. https://www.fdic.gov/regulations/laws/rules/1000-850.html#fdic1000sec.7j.

particularly harmful for Black and brown consumers who are more likely, based on centuries of systemic racism, to have lower credit scores and be marketed high-cost online loans.

KMD Partners says that it intends to migrate existing customers from very high-cost loans to more reasonable ones, provided that consumers first demonstrate their creditworthiness by repaying the initial high-cost loans.[11] The business model where a lender offers a "stepping stone" to low-cost credit has not materialized when introduced in the market in the past and in at least one case has led to an enforcement action on the grounds that consumers did not receive the promised benefits.[12]

In addition, the application shows that the new leadership of Liberty Bank prompts concerns. Proposed CEO Marc Wintriss is the former CEO of CashNetUSA, a consumer finance company that offers payday loans with rates above 300 percent in certain states.[13] He has also been the CEO of First Electronic Bank, a Utah industry loan company that deploys a "rent-a-bank" model that enables non-bank third-party consumer finance companies to evade state laws. First Electronic is currently being used by non-bank lender OppLoans to make installment loans with rates of as high as 160 percent in state that prohibit such loans from non-banks. Separately, First Electronic partners with Personify Financial to issue installment loans with rates of as high as 179.9 percent. [14]

Conclusion

The FDIC should reject the change in control application from KMD Partners to purchase Liberty Bank. This change in control would merge a bank that has not met the needs of its community with an online lender that has a record of issuing high-cost installment loans, led by individuals with experience in payday lending and rent-a-bank schemes.

We call on the FDIC to deny the application for a change in control.

Sincerely,

Jesse Van Tol
CEO
National Community Reinvestment Coalition

[11] Polo Rocha. "Why a High-Cost Consumer Lender Is Buying a Tiny Utah Bank." *American Banker*, June 15, 2021.

[12] Consumer Financial Protection Bureau. "CFPB Orders LendUp to Pay $3.63 Million for Failing to Deliver Promised Benefits: Online Lender Did Not Help Consumers Build Credit or Access Cheaper Loans, As It Claimed," September 27, 2016. https://www.consumerfinance.gov/about-us/newsroom/lendup-enforcement-action/.

[13] CashNetUSA. "CashNetUSA Rates and Terms." Accessed August 6, 2021. https://www.cashnetusa.com/rates-and-terms.html.

[14] National Consumer Law Center. "High-Cost Rent-a-Bank Loan Watch List." Washington, D.C., March 2021. https://www.nclc.org/issues/high-cost-small-loans/rent-a-bank-loan-watch-list.html?print=pdf.

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