

# Divestitures on the horizon for KeyCorp's First Niagara deal

BY LINDSEY WHITE AND ZUHAIB GULL MARCH 4, 2016

A handful of banks received bid sheets to buy divestitures that will result from KeyCorp's pending acquisition of First Niagara Financial Group Inc., a deal that would result in some highly concentrated markets in upstate New York.

Pittsfield, Mass.-based Berkshire Hills Bancorp Inc. received a bid sheet but did not bid on any branches and does not intend to, according to spokeswoman Ali O'Rourke.

Hamburg, N.Y.-based Evans Bancorp Inc. did not receive a bid sheet, but is interested in growing in markets affected by the merger. "We absolutely have an interest," President and CEO David Nasca said in an interview. Evans Bancorp is trying to win business organically now, but will consider buying if there is a resale in the future. "They're going to sell it to one player — there's one bank that will buy everything, and then if that bank wants to resell to reduce its exposure, we would be interested in that," Nasca said.

## IMPACT ON THE COMMUNITY

Cleveland-based KeyCorp announced plans to acquire First Niagara on Oct. 30, 2015, in a \$4.1 billion cash-and-stock deal. In late December 2015, the Federal Reserve extended the public comment period on the deal by a month, to Jan. 31.

In weighing a merger, the Fed considers the impact on the public convenience and need and weighs the banks' CRA records, said Ronald Glancz, the chair of Venable LLP's financial services group who formerly worked at the OCC and the Department of Justice. In its merger application, KeyCorp noted that it has received eight consecutive "outstanding" CRA performance ratings by the OCC.

The OCC, which regulates KeyBank NA and First Niagara Bank NA, received

more than 50 comment letters on the merger. Almost all expressed opposition to the deal. Many commenters were concerned about the impact on New York communities and competitiveness in the merger's markets. Some said the merger should not go through until KeyCorp submits a plan "demonstrating a clearly significant public benefit."

New York Gov. Andrew Cuomo wrote to the Fed, OCC and DOJ, urging them to reject the deal on the basis of competitiveness concerns. "Key Bank's acquisition of First Niagara will, by any objective measure, further limit the ability of Upstate New York consumers to access the financial services and products offered by banks," Cuomo wrote. "This will likely push consumers to rely on non-bank alternatives, such as payday loans and check-cashing, which come with

## Potential buyers for KeyCorp/First Niagara divestitures

Deposit market share in select New York counties where KeyCorp and First Niagara overlap\*

Company (top-level ticker)	Total active branches	Total deposits (\$M)	Deposit market share (%)
M&T Bank Corp. (MTB)	66	21,540.0	37.65
<b>First Niagara Financial Group Inc. (FNFG)</b>	<b>90</b>	<b>12,778.1</b>	<b>22.33</b>
<b>KeyCorp (KEY)</b>	<b>90</b>	<b>8,723.4</b>	<b>15.25</b>
Citizens Financial Group Inc. (CFG)	61	4,083.7	7.14
Bank of America Corp. (BAC)	40	2,807.2	4.91
TrustCo Bank Corp NY (TRST)	29	1,258.1	2.20
NBT Bancorp Inc. (NBTB)	21	1,161.7	2.03
Evans Bancorp Inc. (EVBN)	13	726.6	1.27
Pioneer Savings Bank	12	560.2	0.98
Berkshire Hills Bancorp Inc. (BHLB)	18	554.8	0.97
Community Bank System Inc. (CBU)	11	386.3	0.68
Kinderhook Bank Corp. (NUBK)	8	345.4	0.60
Toronto-Dominion Bank (TD)	6	322.0	0.56
Northwest Bancshares Inc. (NWBI)	8	250.6	0.44
Alden State Bank	2	241.6	0.42
Bank of Akron (BARK)	5	240.4	0.42
Lake Shore Bancorp Inc. (MHC) (LSBK)	6	171.2	0.30
Chemung Financial Corp. (CHMG)	5	163.5	0.29
Financial Institutions Inc. (FISI)	3	136.8	0.24
Greene County Bancorp Inc. (MHC) (GCBC)	6	115.8	0.20
<b>Total</b>	<b>524</b>	<b>57,216.0</b>	

Data compiled Feb. 29, 2016.

\* Analysis is based on nine counties in New York where KeyCorp's pending acquisition of First Niagara Financial Group Inc. would be considered as highly concentrated based on a definition by the U.S. Department of Justice and the Federal Trade Commission. Counties included are Albany, Columbia, Cortland, Erie, Franklin, Fulton, Montgomery, Niagara and Rensselaer. Credit unions are excluded from the analysis.

Current figures are adjusted for completed mergers and acquisitions, as well as openings and closings, since the FDIC Summary of Deposits filing for June 30, 2015. Deposits in closed branches are included in the analysis under the assumption that after a branch closure, deposits still remain with the parent institution within the same market.

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MHC = mutual holding company

Source: SNL Financial, a part of S&P Global Market Intelligence

# S&P Global Market Intelligence

higher consumer transaction costs.” His letter also highlighted potential negative impacts on the community, including job losses and branch closures.

In an emailed statement, KeyCorp spokesman Jack Sparks noted the company’s commitment to communities in upstate New York and said KeyCorp looks forward to working with Cuomo and his staff to address the concerns. The Fed received many comment letters from community groups and nonprofits in Ohio (as well as some in New York) voicing support for the deal and highlighting KeyCorp’s dedication to local communities.

KeyCorp’s president and CEO, Beth Mooney, addressed opposition to the deal during the bank’s earnings conference call in January. She said KeyCorp has been diligent in reaching out to community leaders and has held very constructive discussions. “[W]e are obviously in the process with the Department of Justice, who will make the determinations on the divestiture numbers, and working through our plans and our progress. And I think we will be a good and significant partner, and good for those communities and those customers,” Mooney said. KeyCorp also acknowledged in its merger application that it expects to consolidate certain branches, and to divest certain others in the Buffalo, N.Y., area.

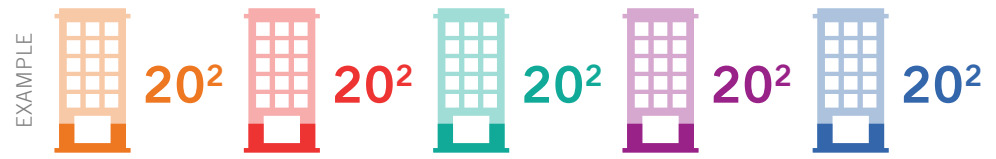
“There are ways of working this out so that competition is preserved,” Glancz said.

## Herfindahl–Hirschman Index (HHI)

A measure of market concentration regulators use in weighing the likely competitive effects of a merger

Calculate by squaring the market share of each competing company

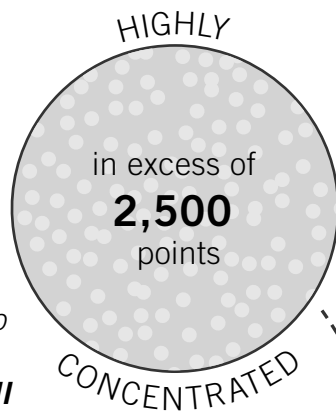
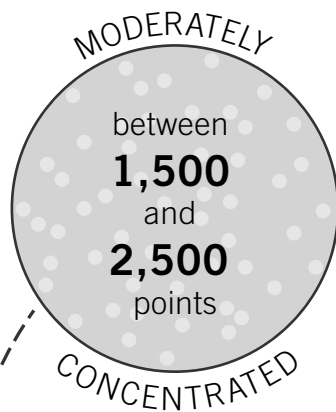
For example, in a market with five companies that each have a 20% market share:



Then add the resulting numbers

400 + 400 + 400 + 400 + 400

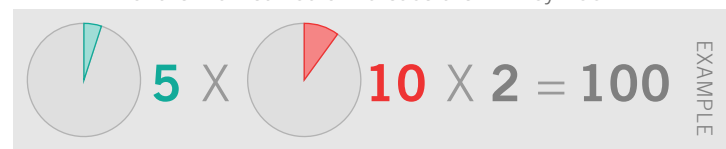
= HHI of 2,000



Regulators also consider the **increase in HHI** resulting from a merger.

The increase in HHI is equal to twice the product of the market shares of the merging companies.

For example, the merger of companies with 5% and 10% shares of the market would increase the HHI by 100.



With increase of **more than 100** points

With increase **between 100 and 200** points

Potentially raise significant competitive concerns and often warrant scrutiny

With increase of **more than 200** points

Presumed to be likely to enhance market power

The presumption may be rebutted by persuasive evidence showing that the merger is unlikely to enhance market power.

## CLOSE TO DIVEST

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Regulators consider the Herfindahl-Hirschman Index, or HHI, when weighing the competitive effects of a merger. For example, the Buffalo market has an HHI score of 3,157; this would jump by 434 to 3,591 following the KeyCorp-First Niagara merger, according to an analysis based on the FDIC's June 30, 2015, Summary of Deposits data. The DOJ defines any score in excess of 2,500 as "highly concentrated."

Guidelines from the DOJ and CFTC state that the higher the post-merger HHI and increase in the HHI, the greater are the potential competitive concerns and the greater is the likelihood that the agencies will request additional information to conduct their analysis. An analysis by S&P Global Market Intelligence found nine counties in New York that would be considered highly concentrated based on these guidelines: Albany, Columbia, Cortland, Erie, Franklin, Fulton, Montgomery, Niagara and Rensselaer.

When looking at those counties on a combined basis, M&T Bank Corp. is the bank with the highest deposit market share, followed by First Niagara and then KeyCorp. Citizens Financial Group Inc. had the fourth-highest deposit market share in these counties; the bank had not responded to requests for comment at the time of publication.

Some other banks with a presence in these markets, such as De Witt, N.Y.-based Community Bank System Inc. and Glensville, N.Y.-based TrustCo Bank Corp NY, declined to comment on their interest in the divestitures.

The DOJ declined to comment on the KeyCorp/First Niagara deal specifically. But in 2011, the agency weighed in on another bank merger in upstate New York: First Niagara Bank NA and HSBC Bank USA NA agreed to sell 26 branch offices in the Buffalo area to resolve antitrust concerns from the sale of HSBC's branch network in upstate New York to First Niagara. Without those divestitures, the DOJ said the acquisition would likely have had an adverse effect on competition in the Buffalo area for retail banking or small-business banking services. First Niagara ultimately sold these branches, plus some additional New York locations — to KeyCorp.

## ANTI-BANK SENTIMENT

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Given the current political climate, bank mergers could increasingly face the type of opposition raised by Cuomo. Glancz expects to see increasing M&A activity among large regional banks, and more consolidation will lead to bigger banks.

"There is a real populist sentiment in this country now," Glancz said. "And also there's sort of an anti-bank sentiment, too, because of the last crisis, and so therefore there is some skepticism, I think, as banks get bigger." ❖