



MEMORANDUM

TO: Federal Financial Analytics Clients
FROM: Karen Petrou
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As I noted [last week](#), the OCC's proposed bank-merger policy fails to reckon with the strong supervisory and regulatory powers federal banking agencies already have to quash problematic consolidations and concentrations. Here, I turn to one reason why the OCC may not trust these rules: it doesn't trust itself. A bit of recent history shows all too well why this self-doubt is warranted even though it's also inexcusable.

I owe my historical recall to the authoritative Bank Reg Blog, which [last week](#) looked at the latest on NYCB. This included a troubling reminder of the troubled bank's merger with Flagstar before it thought it snapped up another great deal from the FDIC via acquiring what was left of Signature Bank.

NYCB first sought approval for the Flagstar acquisition in 2021 when its primary federal regulator was the FDIC. As is often the case with merger applications, this one appeared to go into a dark hole. Unlike many other acquisitions, the banking companies had a go-to Plan B: charter conversion.

NYCB went to the OCC and got rapid approval not just for converting its charter to a national bank, but also then for acquiring Flagstar via a reverse flip that also involved a Flagstar conversion to a national charter. The OCC then readily approved the merger in 2022, just in time for some of the super-rapid growth via the Signature deal both the OCC and FDIC approved even though they should have been well aware that rapid-fire mergers almost always lead to the serious integration problems now all too evident at NYCB along with its fundamental unreadiness to grow so big so fast and dangerous CRE concentrations.

Charter conversions have a very bad record of leading to lowest-common-denominator supervision. This the OCC [knew well](#) in 2012 when it emphatically declared that it would not approve charter conversions if these obscured supervisory failings. Then, it learned the hard lesson of the 2008 crisis that featured gigantic, costly failures following opportunistic charter flips. In 2022, the OCC nonetheless approved the NYCB/Flagstar conversions, perhaps succumbing to the sin of complacency Acting Comptroller Hsu often cites at the banks he supervises.

And, even if the OCC felt disposed to disregard its own policy and add a new bank to its roster along with the significant assessment revenue this entails, Congress in the [Dodd-Frank Act](#) demanded greater charter-conversion scrutiny and banned them if a company had any outstanding federal or state supervisory actions except when the agencies think conversion is warranted to avoid still worse. We'll likely never know if the FDIC's decision not to approve the NYCB/Flagstar merger was simple incompetence – not exactly unprecedented – but there may well have been supervisory problems at one or both banks given what so quickly befell it. These are grounds not

only to question the Signature acquisition, as many have, but also to observe that at least some of the flaws in bank consolidation cited by the OCC are of its own making.

The OCC and indeed all of the banking agencies have needed to update their merger policy for at least the last five years as shadow banking redefined the competitive landscape and the combination of new standards and technologies along with ultra-low rates sharply limited bank profitability. The OCC is to be congratulated for leading the way with a merger policy, but then promptly condemned for coming up with one without a commitment to use existing regulatory and supervisory powers or a plan to redress the OCC's own role allowing problem banks to grow still bigger and thus still riskier.