

**Attention First United Shareholders**  
**Important Information—Please Read**

April 20, 2020

Dear Fellow Shareholders,

If you have received First United’s Proxy Statement, you have probably seen a lot of references to an investigation (the “Investigation”) by the Maryland Commissioner regarding Driver. We think that First United is grossly mischaracterizing the existence, focus, and potential impact of the Commissioner’s activity, in an effort to distract shareholders from the important issues regarding First United and its future that are at stake in this election. We recognize that you may have questions about the Investigation, and we have set out what we think are the most relevant questions below, along with our answers to those questions.

***Please Read Questions and Answers Carefully***

**What is this Investigation that I have been hearing about?**

The Office of the Commissioner of Financial Regulation (the “Maryland Commissioner”) within the Maryland Department of Labor, Licensing, and Regulation (the “Department of Labor”) is conducting an investigation into whether Driver should have provided advance notice of certain purchases of First United common stock. The Maryland Commissioner is not conducting an investigation “of” Driver or “into” Driver, or otherwise alleging any wrongdoing or malfeasance by Driver.

**Does the Investigation affect my ability to vote my shares?**

No, the Investigation does not affect your ability to vote your shares and Driver believes that your vote is now more important than ever. Even First United recognizes in its definitive proxy statement that absent an adverse determination prior to the Annual Meeting, the existence of the Investigation has no effect on Driver’s nominations.

**Will Driver be able to vote its shares?**

Yes. Unless and until an adjudication that Driver violated any law—which Driver does not anticipate—Driver is entitled to vote its shares to elect directors, as any other shareholder.

Driver does not believe there is any merit to the Investigation in fact or law, and does not believe there is any likelihood that Driver will be prohibited from voting its shares.

Driver is prepared and willing to protect its shareholder rights in court if necessary.

**Is Driver able to nominate candidates for election to director?**

Yes. Driver, like anyone else who holds shares of common stock, is entitled to nominate candidates for election to director.

In its definitive proxy statement, First United recognizes that Driver’s nominations are valid notwithstanding the pendency of the Investigation. While First United speculates in its proxy statement that an adverse finding by the Maryland Commissioner might impact those nominations if made before the Annual Meeting, Driver believes First United’s view is wrong both as to the potential impact of the Commissioner’s investigation and the meaning of

First United's bylaws. We believe these statements are intended primarily to dissuade shareholders from voting for Driver's Nominees.

Driver is prepared and willing to defend its right to nominate candidates for election to director, in court if necessary.

**Should the existence of the Investigation impact my voting decision?**

That is up to you, but Driver understands that First United has spoken with the Maryland Commissioner specifically about the Investigation, and suspects that the Investigation was opened in response to a request by First United as part of a larger campaign by First United's Board to further entrench themselves—a campaign that, if successful, Driver believes will have a negative impact on shareholder value.

To be clear, the Investigation relates solely to a narrow legal question of whether the advance notice provisions of a seldom-used Maryland statute regulating purchases of controlling interests in Maryland banks (and bank holding companies) should apply to some portion of Driver's purchases of a minority interest in First United shares. We regard it as a distraction that should have no bearing on any shareholder's voting decision, notwithstanding the grossly misleading characterizations made by First United's existing management.

For more information, please see "Supplemental Questions and Answers about the Investigation" below and go to <https://www.renovatemybank.com/news-resources/> where Driver has posted important information about the Investigation. You can also contact driver at [info@drivermgmtco.com](mailto:info@drivermgmtco.com) or our proxy solicitor, Saratoga Proxy Consulting, by calling John Ferguson or Joe Mills at 212-257-1311 or emailing them at [jferguston@saratogaproxy.com](mailto:jferguston@saratogaproxy.com) and [jmills@saratogaproxy.com](mailto:jmills@saratogaproxy.com)

J. Abbott R. Cooper  
Managing Member  
Driver Management Company LLC

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**Supplemental Questions and Answers**

**What is the investigation?**

As noted above, the Maryland Commissioner has opened an investigation in response to notice by an unnamed party that purchases of First United common stock by Driver<sup>i</sup> totaled more than 5% of FUNC's outstanding stock.

**Who is the Maryland Commissioner and what are they investigating?**

The Maryland Commissioner is the primary state regulator of First United's subsidiary First United Bank & Trust (the "Bank"). Maryland has a state law, codified at § 3-314 of the Financial Institutions Article ("Section 3-314"),<sup>ii</sup> dealing with the acquisition of a controlling interest in a Maryland bank or bank holding company. The controlling interest is described by the statute as a "Stock Acquisition." Driver has been aware of Section 3-314 since before its earliest purchase of First United common stock, and has never believed it to apply to these circumstances.

**What is a Stock Acquisition?**

The relevant provision of Section 3-314, defines a Stock Acquisition as:

An acquisition of the outstanding voting stock of a commercial bank or bank holding company in this State, if the acquisition will affect the power to direct or to cause the direction of the management or policy of any banking institution or bank holding company.

Since its adoption in 1979, the statute has always been concerned only with purchases resulting in a change in control, which is not present here. There is no reported decision of the Maryland Commissioner ever finding an investor to have made a Stock Acquisition in these circumstances.

**Why is the Maryland Commissioner involved?**

Driver does not know what led the Maryland Commissioner to open an investigation under Section 3-314, but Driver recognizes that:

- First, the language of Section 3-314 extends the scope of the statute to include bank holding companies in Maryland; and
- Second, the number of Maryland chartered banks has been shrinking due to consolidation, and the Maryland Commissioner may have an interest in protecting Maryland state-chartered banks, even from their (indirect) shareholders.

**Does Driver own stock in the Bank?**

No. Driver, like all other public stockholders, owns shares of First United, a bank holding company registered with and regulated by the Board of Governors of the Federal Reserve System (the "Federal Reserve"); the Bank is a subsidiary, and the primary asset, of First United.

**Is the Federal Reserve investigating Driver?**

No, the Federal Reserve is not investigating Driver.

**What does it mean to “affect the power to direct or cause the direction of the management or policy” of a bank holding company?**

Driver believes this language was intended to refer to control over a bank holding company, in part because pursuant to the Bank Holding Company Act, a person has control over a bank if that person “*directly or indirectly exercises a controlling definition influence over the management or policies*” of a bank holding company. The Maryland Department of Labor has described the statute as applying to a “purchaser of control” over a bank holding company, and the Maryland legislature stated that its purpose was to regulate transactions “which will result in a change in the control of a banking institution or bank holding company.”

**Does Driver control First United?**

As a legal matter, based on a recent rule issued by the Federal Reserve on the very subject of control of bank holding companies, Driver does not control First United.

**Driver wanted First United to sell—does that have anything to do with control?**

As First United seems to have quite easily ignored Driver’s (and other shareholders’) requests that First United explore a sale, Driver believes it is obvious that Driver neither controls First United nor has any “*power to direct or cause the direction of management or policies*” of First United.

**What about directors? If Driver’s nominees are elected to the First United Board, will Driver control First United?**

If all Driver’s nominees are elected, Driver will demonstrate to the Federal Reserve that none of Driver’s nominees are representing only the interests of Driver (and that they will be representing the interests of all shareholders) on the First United Board and, if the Federal Reserve does not agree, then Driver may sell some of its shares so that it owns less than 5% of the outstanding shares of First United common stock; in either case, Driver will not be deemed to control First United.

**So, if Driver doesn’t control First United, why is the Maryland Commissioner investigating Driver?**

Under Section 3-314, “if there is any doubt as to whether the stock acquisition will affect the power to direct or cause the direction” if a bank holding company, a person is supposed to get prior approval from the Maryland Commissioner before making a Stock Acquisition.

**Why didn’t Driver just go get prior approval from the Maryland Commissioner before buying any shares of First United?**

Driver did not have any doubt that buying shares would not “affect the power to direct or cause the direction” of First United and, quite frankly, is surprised that the Maryland Commissioner would consider that simply buying a small minority interest (even an approximately 5% interest) in a publicly traded bank holding company through the purchase of shares in the open market could possibly rise to the level of a change in control that might trigger the statute.

**Driver seems pretty sure about that—it is it really so cut and dried?**

Driver believes it is very cut and dried based on the following analysis:

- Driver owns 5.07% of the outstanding shares of First United common stock and currently has no other relationship (such as having nominated a First United Board member or doing a material amount of business with First United);
- Driver has the same limited rights as any other shareholder, which primarily consist of the right to vote to elect directors; and
- Based on Driver’s extensive review of guidance and a proposed and now final rulemaking by the Federal Reserve, Driver would not be deemed to control First United.

**Why did Driver look at what the Federal Reserve had to say if this is a Maryland law? Why didn’t Driver just look at what the Maryland Commissioner has said about the subject?**

The Maryland Commissioner has never offered any guidance on how the vague language of Section 3-314 should be interpreted, and to Driver’s knowledge, Section 3-314 has only ever been cited by a court in one decision twenty years ago.<sup>iii</sup> Driver relied upon what the Federal Reserve has said on the subject because (i) the Federal Reserve has frequently addressed the issue of what constitutes control of a bank holding company, (ii) the Federal Reserve has previously issued extensive guidance on the subject and, in fact, had recently proposed a comprehensive modification to the control rule, and (iii) First United is a bank holding company organized pursuant to the Bank Holding Company Act and subject to regulation by the Federal Reserve as its primary federal regulator.

**Has the Maryland Commissioner ever investigated a person for violating Section 3-314 before?**

Other than with respect to the one court reference from more than twenty years ago, Driver is unaware of anyone who has been investigated by the Maryland Commissioner for compliance with Section 3-314. Driver has specifically requested, including through a formal Public Information Act request (Maryland’s counterpart to FOIA), that the Maryland Commissioner provide Driver with examples of any instances where the Maryland Commissioner has investigated a person for violating Section 3-314. To date, the Maryland Commissioner has not responded.

**Has the Maryland Commissioner provided Driver with any examples of investigations of persons for violating Section 3-314?**

No, the Maryland Commissioner has not provided Driver with any examples of other investigations. Several publicly traded bank holding companies in Maryland have shareholders with larger (in some cases, substantially larger) ownership interests than Driver has in First United.

**Aren't there a number of other publicly traded bank holding companies in Maryland who have shareholders with larger ownership interests than Driver? If the Maryland Commissioner is investigating Driver, should they also have investigated those other larger shareholders?**

Yes, several publicly traded bank holding companies in Maryland have shareholders with larger (in some cases, substantially larger) ownership interests than Driver has in First United and that is a good question.

**When did this investigation start?**

Driver was first notified of the investigation by the Maryland Commissioner on January 21, 2020.

**When did Driver buy its shares in First United?**

Driver began buying shares of First United in early 2019 and had purchased 360,637 shares by the end of August 2019.

**Was Driver trying to hide the fact that it owned shares of First United?**

No, not only did Driver first publicly call for a sale of First United in March 2019 (and publicly disclose then that it owned shares of First United), but Driver began filing ownership reports on Schedule 13D on September 5, 2019—in fact from that date until the date that Driver was notified by the Maryland Commissioner that it was under investigation for potentially making a Stock Acquisition, Driver filed thirteen ownership reports with the SEC, as well as a plethora of proxy soliciting materials and frequently spoke to various media outlets regarding its position in, and views on, First United.

**If it was so well known that Driver owned more than 5% of the outstanding shares of First United, why did the Maryland Commissioner wait so long to start investigating Driver?**

Driver doesn't know, but believes that the Maryland Commissioner began its investigation in response to a request from First United.

**Why would First United want the Maryland Commissioner to investigate Driver**

We have been highly critical (with, in our view, abundant good reason) of First United's Board and management team, and we have pushed First United to explore a sale, which could put the interests of the Board and management team (interests that are not shared with shareholders generally) at risk. We are also currently trying to replace three of the current Board members, so First United probably sees us as a significant threat to the status quo.

**Is the Maryland Commissioner supposed to protect boards and management teams from their shareholders?**

Driver does not believe that the role of the Maryland Commissioner is to protect boards and management teams from their shareholders and suspects that the Maryland Commissioner may have started its investigation based on an extremely biased and

likely materially inaccurate summary of the situation provided by First United.

**What is Section 3-314 intended to do?**

Section 3-314 is intended to help ensure the safety and soundness of Maryland banks and prevent anticompetitive activity: in fact the Maryland Commissioner may only deny approval for a Stock Acquisition that it “determines to be anticompetitive or to threaten the safety and soundness of a banking institution.”

**Is Driver’s ownership of First United shares anticompetitive or threaten the safety or soundness of First United?**

Driver’s ownership of First United shares has no impact on competition or First United’s safety and soundness—indeed, Driver believes that the primary threat to First United’s safety and soundness comes from the continued control of First United by a CEO and certain First United Board members who implemented and endorsed a series of disastrous strategies prior to and during the Financial Crisis that resulted in tens of millions of dollars of destroyed shareholder value as well as regulatory action.

**What happens if the Maryland Commissioner finds that Driver improperly failed to seek its prior approval for a Stock Acquisition?**

Under the terms of Section 3-314, if Driver is found to have violated the advance notice provisions for a Stock Acquisition, as that term is defined in the statute, then Driver’s voting rights as to those shares could be suspended for five years. The first step in obtaining such a judgment would be a finding by the Maryland Commissioner upon the conclusion of its investigation, supported by evidence obtained through the investigation, that Driver had an obligation to seek its prior approval for some portion of the shares purchased.

**Five years seems a little extreme doesn’t it?**

Yes and the only court that, as far as Driver knows, has ever considered Section 3-314 felt that way too.<sup>iv</sup>

**Is Driver regulated by the Maryland Commissioner? How would the Maryland Commissioner prevent Driver from voting its shares?**

Driver is not regulated by the Maryland Commissioner and it is unclear (at best) how the Maryland Commissioner would or could limit Driver’s fundamental shareholder right to vote—what is clear, however, is that Driver would defend its fundamental rights as a shareholder in a court of competent jurisdiction.

**What is happening with the investigation now?**

While Driver has informed the Maryland Commissioner that it does not believe the investigation is warranted by the facts or applicable law and made a detailed and well researched submission<sup>v</sup> to the Maryland Commissioner in support, Driver is currently cooperating with the Maryland Commissioner’s investigation in order to quickly resolve what Driver regards as an unfortunate distraction from the more important task of bringing needed change to First United’s Board.

**Does the investigation affect  
Driver's ability to nominate  
candidates for director?**

No—while Driver is aware that First United has expressed a contrary view (conditioned on the Maryland Commissioner making an adverse finding before the Annual Meeting), Driver believes that view is based on an intentionally tortured reading of this provision from First United's Bylaws:

*Nomination for election of members of the Board of Directors may be made by the Board of Directors or by any stockholder of any outstanding class of capital stock of the Corporation entitled to vote for the election of Directors.<sup>vi</sup>*

Driver believes that as a holder of shares of common stock (which is the only class of First United's capital stock entitled to vote for the election of directors), the investigation and its outcome have no bearing on Driver's right to nominate candidates for election to director and is prepared and willing to defend that right in court.

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<sup>i</sup> Driver refers to both Driver Opportunity Partners I LP and Driver Management Company LLC, its general partner

<sup>ii</sup> Section 3-314 is reproduced in its entirety below:

**Section 3-314. Approval of Commissioner of certain stock transactions**

(a)

(1) In this section the following words have the meanings indicated.

(2) "Bank holding company" has the meaning stated in the Federal Bank Holding Company Act of 1956.

(3) "Stock acquisition" means:

(i) An acquisition of the outstanding voting stock of a commercial bank or bank holding company in this State, if the acquisition will affect the power to direct or to cause the direction of the management or policy of any banking institution or bank holding company; or

(ii) An acquisition of any voting stock of a commercial bank, if the acquisition will give any one person control of 25 percent or more of the voting stock of the commercial bank.

(b) Except as provided in this section, a person may not make a stock acquisition.

(c)

(1) A person who intends to make a stock acquisition shall apply to the Commissioner for approval, at least 60 days before the acquisition becomes effective.

(2) The application shall include:

(i) A description of the proposed stock acquisition; and

(ii) All other information that is available to inform the Commissioner of the effect of the acquisition on the power to direct or to cause direction of the management or policy of a banking institution or bank holding company.

(3) If there is any doubt as to whether the stock acquisition will affect the power to direct or cause direction of the management or policy of a commercial bank or bank holding company, the doubt shall be resolved in favor of reporting to the Commissioner.

(d) The Commissioner may deny approval for a stock acquisition that the Commissioner determines to be anticompetitive or to threaten the safety or soundness of a banking institution.

(e) Voting stock that is acquired in violation of this section may not be voted for 5 years.

(f) The provisions of this section do not apply to an acquisition for which an application is required under § [5-904](#) of this article.

<sup>iii</sup> The only court decision Driver is aware of that even references Section 3-314—an unreported decision from more than 20 years ago by the U.S. District Court for the District of Maryland—noted that the statute had not been the subject of any reported decision and did not articulate any test for how sub-section (a)(3)(i) should be interpreted. See *Mason-Dixon Bancshares, Inc. v. Anthony Investments, Inc.*, No. Civ. A. CCB-96-3836, 1997 WL 33482710 (D. Md. Mar. 3, 1997).

<sup>iv</sup> *Mason-Dixon Bancshares* at 9.

<sup>v</sup> Available at [https://renovatebank.com/wp-content/uploads/2020/04/126611\\_112498121v8\\_Driver-response-to-DLLR.pdf](https://renovatebank.com/wp-content/uploads/2020/04/126611_112498121v8_Driver-response-to-DLLR.pdf)

<sup>vi</sup> [https://www.sec.gov/Archives/edgar/data/763907/000114420408014719/v106556\\_ex3-2i.htm](https://www.sec.gov/Archives/edgar/data/763907/000114420408014719/v106556_ex3-2i.htm)