Featured Professionals

Karen L. Grandstrand

The Current State of De Novo Bank Charters

Legal Update
09.04.2018

By Karen L. Grandstrand

The number of FDIC-insured institutions in the U.S. was at 5,670 as of March 30, 2018, down from 8,534 as of December 31, 2007. Over the past five years, 1,292 institutions have been absorbed by mergers and 63 have failed. Another factor behind the reduced number of institutions, however, is the small number of *de novo* banks. Very few new charters have been pursued and approved in recent years.

The FDIC has responded to concerns over the lack of new charters by holding outreach sessions, issuing a new handbook in April 2017 titled *Applying for Deposit Insurance — A Handbook for Organizers of* De Novo *Institutions*, and changing the required business plan period from seven years to three years.

As explained in the Handbook, Part 303 (Subpart B) of the FDIC Rules and Regulations sets forth the administrative procedures for applying for deposit insurance. Other important guidance includes the FDIC's Statement of Policy (SOP) issued on August 20, 1998; FDIC Q&As issued in November 2014 regarding the SOP entitled "Guidance Related to the FDIC Statement of Policy on Applications for Deposit Insurance" that address pre-filing meetings, processing timeframes, initial capital, and business plans; additional April 2016 Q&As that further address business plans; and an FDIC *Supervisory Insights* article issued in Summer 2016 titled "*De Novo* Banks: Economic Trends and Supervisory Framework."

Despite the FDIC outreach and efforts to make the process more transparent, there continue to be few new charters. Most of the recent *de novo* activity is occurring in markets that no longer have banks for sale. Otherwise, pursuing a new charter has been viewed as too difficult, and many question whether there is a sufficient return on equity, or even the possibility of raising the required equity, given regulatory expectations related to capital levels. Indeed, Core Commercial Bank (mentioned below) reportedly did not move forward because it was unable to raise sufficient capital. Questions continue as to whether current regulatory capital benchmarks are appropriate or whether they are too high and an inappropriate barrier to entry.

A review of recent deposit insurance application approvals by the FDIC reveals the following:

Bank

Capital

FDIC Approval Date

Studio Bank, Nashville, TN

$39,452,000

6/6/18

CommerceOne Bank, Birmingham, AL

$30,000,000

3/21/18

Endeavor Bank, San Diego, CA

$25,000,000

10/20/17

Beacon Community Bank, Charleston, SC

$22,000,000

10/5/17

Winter Park National Bank, Winter Park, FL

$30,000,000

6/28/17

Infinity Bank, Santa Ana, CA

$30,000,000

6/12/17

The Bank of Austin, Austin, TX

$31,364,000

5/30/17

International Bank of Commerce, Oklahoma City, OK

$190,000,000

12/5/16

Blue Gate Bank, Costa Mesa, CA

$30,000,000

10/3/16

Core Commercial Bank, Newport Beach, CA

$25,000,000

12/29/15

Three additional banks reportedly have also filed for charters:

- Community Bank of the Carolinas, Winston-Salem, NC, with proposed capital of $25,000,000;
- Watermark Bank, Oklahoma City, OK, with proposed capital of $20,000,000; and
- Ohio State Bank, Bexley, OH, with proposed capital of $20,000,000–$25,000,000.

Accordingly, it appears that the current typical capital level is between $20,000,000 and $40,000,000 (ignoring International Bank of Commerce, which was a corporate reorganization by publicly-traded, $11.9 billion International Bancshares Corporation, Laredo, TX).

In addition to capital, two other factors have been stumbling blocks for recent charters. One is management. Pacific Metro Bank, Johns Creek, GA, reportedly withdrew its application after the loss of a key management official. The other is funding. Blue Gate Bank, Costa Mesa, CA, approved in 2016, is in the process of being sold reportedly because it could not attract core deposits needed to support its loan growth and could not obtain regulatory approval to rely on non-core funding sources.

The number of new charters has declined dramatically in recent years. From 1990 to 2008, 2,000 new banks were formed, or roughly 100 per year. From 2009 to 2013, there were seven new charters, fewer than two per year. Although the FDIC began to take affirmative actions in 2014 to increase market entrants, the numbers have barely increased. Many blame regulatory hurdles; others contend it is a combination of regulatory hurdles and the economy. But everyone seems to agree on one thing — the industry needs new entrants.

The new head of the FDIC, Jelena McWilliams, has stated that she intends to have her staff take a serious look at the *de novo* charter issue. Accordingly, stay tuned for potential additional policy changes in 2018 and a return to a time when new charters significantly outpaced failures.