Charter Conversions

Presentation for:
Independent Community Bankers of America
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Presentation by:
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About Carleton Goss

- I advise financial institutions on mergers and acquisitions and securities offerings and other corporate transactions

- I also advise financial institutions on regulatory and enforcement matters

- I am a member of the Board of Editors of the Banking Law Journal

- I previously worked at the Office of the Comptroller of the Currency

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Agenda – Can, Why and How

- Banks that are considering a charter conversion need to consider **can**, **why** and **how**
- **Can** we convert? Prohibited by Dodd-Frank?
- **Why** should we convert? Good reasons include no longer satisfying QTL or higher legal lending limit
- **How** do we convert? Four stages:
  - Pre-filing of the application
  - Filing application to approval
  - Approval to closing
  - Post-closing

Can we convert? Dodd Frank Act Section 612

- Banks subject to a public enforcement action generally may not convert
  - Exceptions are theoretically available, but not aware of one being granted
- Prohibition extends to banks with MOUs that contain a "significant supervisory matter"
- Does not apply to state banks seeking or relinquishing Federal Reserve membership
- Does not apply to conversion to different type of state charter
- For more information see 2012 Interagency Statement

Can we convert? Supervisory Considerations

- In addition to Dodd Frank Section 612, there may be softer supervisory considerations that could inhibit a conversion:
    - At least a Satisfactory CRA rating generally required
    - Previous history with the new regulator
    - Pending enforcement action
- Consider a draft application if complex/novel issues (this can be discussed at the prefiling meeting)

Why should we convert?

- Integrate charter consideration into strategic planning
- Banks convert charters for a variety of reasons, some good, some not so good

Potentially Good Reasons to Convert	Potentially Not so Good Reasons to Convert
No longer satisfy QTL	Had one bad/unfair examination
Primary regulator is skeptical of your business plan	Desire for broader powers
Potentially higher legal lending limit (National to State)	Assessments
Potentially greater dividend flexibility (National to State)	
Had two or more unfair examinations	
Preemption (State to National)	
State to national trust only	

Stage I – Pre-filing (Planning)

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- Senior management carefully weighs the pros and cons
- Engage counsel to assist
- Draft conversion checklist and timeline
- Board presentation should be detailed, and discussion robust
- If applicable, discuss conversion with major shareholders
- Make decision whether to proceed to next step (regulatory engagement)

Stage I – Pre-filing (Planning) (Holding Company)

- If the bank has a holding company, consider whether bank conversion also requires a holding company conversion (conversion from savings and loan holding company to bank holding company (or vice versa))
- If holding company conversion required, and holding company is a shell, not a difficult conversion
- If converting holding company not a shell, can be a heavier lift. Need to consider, among other things, permissibility of activities and assets

Stage I – Pre-filing (Engage New Regulator)

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- Goal of this step is to introduce yourself to new potential regulator and feel out one another
- Schedule prefiling meeting with new regulator
- Senior management, with the assistance of counsel, prepare presentation for new regulator on the bank covering:
    - Products and Services;
    - Geography;
    - Personnel;
    - Strategic Plan
- Ask for waivers of Interagency Biographical and Financial Reports

Stage I – Pre-filing (Prepare Application)

- Preparing the applications the hardest part of the process
- Important considerations include the following:
  - Strategic Plan and pro forma financials
  - Confirming permissibility of assets and activities, including subsidiaries (and holding company if a holding company conversion)
  - Preparing IBFRs for all directors and senior management

Stage I – Pre-filing (Prepare Application) (cont.)

- Conversion application supplemented with a number of other applications/documents:
    - Fiduciary powers application
    - Director residency waiver application
    - Holding company applications
    - Operating subsidiary applications
    - Policies and procedures
    - Corporate governance documents

Stage II – Filing to Approval (Respond to inquiries)

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- Stage I is the most active – Stage II is the least active
- Do not be discouraged if there is a lot of waiting
- Respond to additional information requests from the regulators
- Regulators conduct interviews and examinations (potentially on-site)
- Potentially additional information requests
- Regulators will provide a draft approval that may or may not contain supervisory conditions

Stage II – Filing to Approval (Supervisory Conditions)

- Potential supervisory conditions include:
  - Divestitures of impermissible assets/activities
  - Capital requirements
  - New or improved policies/procedures
  - An audit
  - Prior no objection to material deviations from business plan

Stage III – Approval to Closing

- Stage III tends to be the shortest stage
- Banks work towards demonstrating compliance with supervisory conditions
- Bank completes corporate governance steps required to effectuate conversion
- Bank lines up operational steps required to effectuate conversion
- Regulators confirm conditions are satisfied and provides final approval to convert

Stage IV – Post-Closing

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- Congratulations – your conversion is complete
- Consider marketing announcement
- File FR Y-10 to reflect new charter
- UCC filings/real property deeds typically update as a matter of law (confirm)
- Consider whether you have contractual notice obligations to counterparties (unlikely)
- Organize copies of applications and approvals

Thank you

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From: [redacted]
Sent: Monday, November 14, 2022 10:21 AM
To: Goss, Carleton <CGoss@hunton.com>
Subject: FW: 🎓 Will new CRA rules affect your bank?

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Hi Carlton,

I see you are leading a webinar this week on charter conversions. You're a pro at this! Good luck.

[redacted]

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Questions?

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