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March 29, 2019

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

Via Email to: Comments@fdic.gov

Re: FDIC's Deposit Insurance Application Process (RIN 3064-ZA03)

Dear Mr. Feldman,

The National Association of Industrial Bankers¹ is a trade association and we appreciate the opportunity to comment on the important and timely topic of the FDIC's Deposit Insurance Application process. Below are our responses.

1. What steps, if any, can the FDIC take to improve the de novo application process?

Recent changes to the application process have been well received and much appreciated, especially increased pre-filing meetings to review drafts and ensure that applications are complete and ready for decision when filed.

The biggest improvement would be achieved by delegating more authority to regional offices. They are closer to the applicants and the markets they want serve.

¹ First chartered in 1910, industrial banks operate under a number of titles including industrial loan banks and industrial loan corporations. These banks engage in consumer and commercial lending on both a secured and unsecured basis. They do not offer demand checking accounts but do accept time deposits, savings deposit money market accounts and NOW accounts. Industrial banks provide a broad array of products and services to customers and small businesses nationwide, including some of the most underserved segments of the US economy. Our members are chartered in California, Nevada and Utah.

Applicants often meet with FDIC officials who gather information and deliver messages but do not have authority to do more. The process remains opaque to the applicant.

We realize that a degree of uniformity is needed for a program operating nationwide but it would be helpful to be able to discuss issues with decision makers to avoid misunderstandings and ensure possible solutions to issues are fully discussed.

2. Are there any specific aspects or components of the application process that particularly discourage potential applicants from initiating or completing the application process?

First, the FDIC must change the perception during the past ten years that filing an application is a waste of time and money. Recent statements by new Chairman Jelena McWilliams, together with some recent application approvals, have helped to dispel this perception.

Next, FDIC needs to end practices designed to discourage, and in some cases block, applications by nontraditional banks such as telling potential applicants that the FDIC will not approve any application that involves the use of brokered deposits to any significant degree. These practices have impeded the development of nontraditional banking models such as branchless banks despite the fact that laws specifically permit such banks to qualify for federal deposit insurance and nothing inherently makes such banks unacceptably unsafe, unsound or unable to comply with laws and regulations.

Consistency is also needed. Applications by nontraditional banks were routinely processed and approved prior to 2008 and those banks have established a solid record of safe and sound operations lacking any significant problems that would justify the FDIC's sudden and unannounced policy of refusing to consider such applications beginning with a change in administration. The new administration in 2008 implemented these policies without announcing or debating them. In fact, FDIC officials frequently denied they were blocking applications, especially as the economy recovered from the Great Recession and new applications should have increased. This substantially impacted the FDIC's credibility and further discouraged many potential applicants.

Many of the industrial banks we represent have operated without branches and relied entirely on brokered deposits for many years. All of the existing branchless banks stated in their applications that they would operate without branches and rely on brokered deposits and the FDIC approved those applications prior to 2008. For over 35 years this group of banks have consistently been among the best-capitalized and most profitable banks in the nation. In response to market trends, this model is growing in usefulness and popularity. This trend will continue for the indefinite future. Many additional banks using this model would

have formed in the past ten years had the FDIC been willing to process their applications.

Restarting applications processing will bring the banking industry into better alignment with today's financial services markets. New applicants can comply with the application process as it works now, but applicants must believe the FDIC will treat their application fairly.

3. Are there ways the FDIC could or should update or supplement existing resources to clarify expectations and promote a more transparent application process? If so, please provide details and support.

Our impression is that the new process is still taking shape but having pre-filing meetings is working out well as a beginning.

It appears that there are still many levels of review and it has been hard for some applicants to get information about what is happening at some of those levels. That is not surprising while the new processes are being developed. Ideally some levels of review will be eliminated in time. It would be especially helpful if regional offices could be delegated more authority to do the actual processing while providing a final report for review in Washington as a last step

We believe it is important to remember that banks can only succeed in the market and careful attention to market conditions is needed while processing applications. For the past ten years, regional offices closest to the markets have been largely ignored and stripped of their authority while policies disconnected from market realities were imposed at the Washington level without appropriate input and discussion. We hope that practice will change going forward. It has unnecessarily stunted the growth and development of the most important financial services providers in the economy.

4. Are there any aspects of the pre-filing process, including with respect to the newly announced process regarding draft deposit insurance proposals that could be modified or enhanced to further clarify expectations or processes for prospective applicants and improve applicants' ability to submit a substantially complete application?

Delegation of authority to regional offices to evaluate and negotiate the terms of an application would be most helpful. The regional people are the individuals who actually meet with applicants. Treating these capable officials as mere messengers stifles communication and leaves applicants in the dark about issues and solutions that could expedite approval.

5. How effective is the application form and its related instructions? Could any elements of the form or instructions be modified or enhanced to improve applicants' ability to submit a substantially complete application?

The application form is somewhat outdated but still workable. It was designed in a time when almost all applications were for traditional community banks. We recognize that with all of the new banking models developing in response to changing market conditions it may not be feasible to design an application form that would cover every question or concern the FDIC might have about an application. The pre-filing meetings can work well to identify all of the important points and collect the information the FDIC needs to decide if an application is complete and satisfactory.

There is some confusion about whether an application should follow the questions in the application form without deviation. Applicants realize that they must provide all of that information but following the form can result in a somewhat disjointed presentation and failing to include information the FDIC will consider critical to reaching a decision on a particular application.

We encourage continuing the practice of allowing an applicant to submit a business plan organized in a way that the applicant believes will better describe its plan and include relevant information not mentioned in the application form. Answers to the questions in the current form can consist of references to the specific pages of the applicant's submission.

6. Are there any aspects of the field investigation process that could be improved to better facilitate completion of the application process?

Our members have not indicated any concerns or issues with the field exams.

7. In what ways could or should the FDIC modify the application process for proposed traditional community banks? How would any suggested changes impact the evaluation of the statutory factors?

Raising capital is often the biggest challenge for a new community bank. For the past several years, regulatory policy has prohibited issuing shares to founders and those who take the biggest risk to finance the organizational activities on different terms than offered to investors that invest after the bank's application is approved and it is ready to commence business. This policy should be reviewed to assess its impact on the ability of organizers to obtain funding to prepare an application and prepare for opening.

8. In what ways could or should the FDIC modify the application process for proposed institutions that are not traditional community banks? How would any suggested changes impact the evaluation of the statutory factors?

This is largely covered in prior answers. The main point is for the FDIC to stop imposing unannounced and unacknowledged prohibitions on approving non-traditional bank applications. The current financial services markets are flush with innovation and the FDIC must be more open to considering new models as

long as they can achieve appropriate standards of safety and soundness. The policy during the past ten years of blocking all nontraditional applications was unfair, an abuse of authority, not based on facts and caused significant distortions in the nation's financial services markets.

9. Are there ways the FDIC could or should tailor its evaluation of applications from proposed institutions that are not traditional community banks, consistent with the statutory factors as described in the FDIC Statement of Policy on Applications for Deposit Insurance (SOP)? If so, please explain.

Our association supports requiring all new applicants to satisfy not just the statutory factors but to present a plan that will enable the bank to thrive and compete effectively in its target markets. To do this, the FDIC needs to understand the nation's financial services markets and develop the expertise to competently evaluate whether an applicant has a sound plan.

In our experience, the San Francisco regional office possessed the highest level of expertise in regulating branchless banks of any regulator in the nation. That expertise was ignored during the past ten years. Instead, delegated authority to process applications was withdrawn and experienced examiners and supervisors were criticized for not agreeing with new policies designed to block innovation in the banking industry.

Simply stated, the most important step the FDIC needs to take is to understand the importance of innovation for the banking industry, the financial services markets, the nation's economy and the public generally. Banks cannot thrive and serve their customers if they are constrained by politically motivated and ideological policies disconnected from market realities. A bank can only thrive by successfully competing with other financial services providers. Regulators should facilitate the development of safe and sound models responsive to the markets, and purge the cloistered administration dedicated to fighting change that characterizes the FDIC during the past ten years.

10. Are there ways the FDIC could or should support the continuing evolution of emerging technology and fintech companies as part of its application review process? Are there particular risks associated with any such proposals, and, if so, are there ways such risks could or should be mitigated?

See foregoing answers.

Bottom line: the FDIC should only approve safe and sound banks but develop the expertise and the willingness, to consider innovative banking models designed to serve developing markets.

11. Are the FDIC's expectations (as provided by the FDIC resources identified in this RFI) regarding capital adequacy and liquidity/funding for prospective applicants sufficiently clear and understandable? If not, what additional information or clarifications could the FDIC provide?

In our experience capital guidelines are fairly well understood. Discussions about capital adequacy during pre-filing meetings should enable both parties to clearly understand capital guidelines for the bank if it is approved.

Liquidity and funding are currently badly obscured by policies prohibiting reliance on brokered deposits and other non-core sources of funding. These are unjustified in the case of branchless banks and need to be revised to reflect market realities. In the meantime, applicants understand that there is a strong emphasis on liquidity and funding. Therefore, plans need to be robust to gain approval. Again, the details are best worked out for each applicant in the pre-filing meetings.

12. Are there legal, regulatory, economic, technological, or other factors separate from the application process that discourage potential applicants from submitting applications for deposit insurance that the FDIC should be aware of? If so, are there steps the FDIC could or should take to mitigate the impact of such factors?

Policies relating to brokered deposits are outdated and should be revised. Brokered deposits have matured into a safe and cost-effective funding option that no longer justifies the current limitations. We recommend proposing changes that would allow banks that have slipped below well capitalized to accept brokered deposits with regulatory approval regardless of their capital ratio. That would help avert a bank failing from lack of liquidity if the FDIC concludes that the liquidity problem is temporary, and the bank will be likely to recover.

The primary impact of the Volcker Rule has been to impede access to capital. Many institutional investors will not invest in a bank or a parent with a bank subsidiary if it might result in the Volcker Rule applying to the investor. This can be addressed by amending policies relating to a presumption of control between 10% and 25% to automatically exclude investors that follow certain guidelines that ensure passivity.

A more aggressive practice of reviewing, simplifying and repealing rules would also be helpful. Apart from the merits of any particular rule, the sheer volume of rules increases with each new law and rule and the size and complexity is becoming a significant compliance burden that discourages many potential applicants who would start a bank from scratch.

13. Are there any other suggestions that the FDIC should consider for improving the effectiveness, efficiency, or transparency of the application process, or for addressing any other interests or concerns of stakeholders relative to the application process?

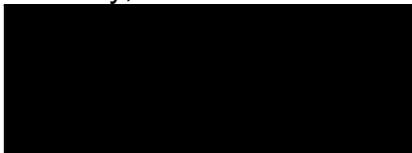
To reiterate what has already been stated, the biggest challenge for the FDIC at this time is to restore consistency and credibility. Applicants who file in good faith should not be confronted with sudden dramatic shifts in application standards after they spent considerable amounts of time and money pursuing a plan that would be successful under past practices, such as applications for a branchless bank that rely on brokered deposits. Again, applicants must have a clear understanding what they need for an application approval.

The FDIC also faces a challenge in restoring its own credibility, which was severely damaged by arbitrary changes in policies and standards; and by official denials that were clearly designed to provide political deniability for actions that were unauthorized and unjustified. We are so grateful for the recent actions and statements by the FDIC Chairman, which are eroding this blemish and restoring confidence in the agency.

Organizers of a new bank often risk a great deal of money and effort, and in some cases their careers, in preparing and submitting an application for deposit insurance. Legitimate and competent organizers are understandably anxious with the past record of the FDIC, affecting decisions whether to proceed with an application. Lack of trust in the FDIC accounts more for the dearth of new bank applications in the past ten years than anything else. Efforts by the new Chairman to dispel this perception are enthusiastically appreciated and effective in creating new interest. We look forward to increasing examples demonstrating her assurances and vision are followed by the agency.

Thank you for the opportunity to provide a response.

Sincerely,



Frank R. Pignanelli
NAIB Executive Director