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ATTORNEYS AT LAW

March 28, 2019

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
Attention: Comments
550 17th Street, NW
Washington, DC 20429

VIA EMAIL & FEDERAL EXPRESS
(comments@fdic.gov)

Re: Request for Information on the FDIC's Deposit Insurance Application Process (FDIC: RIN 3064-ZA03)

Dear Mr. Feldman:

It is our understanding that the period to submit comments to the Federal Deposit Insurance Corporation ("FDIC") in response to the above referenced request has been extended to March 31, 2019. We echo the American Bankers Association's comments dated February 7, 2019, which succinctly speak to a number of the key items that need to be addressed to enhance the *de novo* process. There are, however, more imbedded reasons for the lack of a resurgence in *de novo* banking activity, even in this vibrant economic environment. Members of Igler | Pearlman, P.A. have been involved in the *de novo* chartering process for a number of decades. Some of the reasons that we believe are causing a lack of exuberance in the *de novo* bank sector is a direct correlation to how the FDIC reacted to the 2008 Great Recession and its treatment of banks, management and directors during that period, something that was not seen or experienced in other economic downturns.

The Great Recession had the most significant impact on financial institutions in Arizona, California, Georgia, and Florida, which saw 15, 39, 87 and 70 bank failures, respectively. While in very few instances a bank failure was the result of incompetence, gross negligence or even fraud, the majority of the failures were caused by unexpected circumstances, not in the control of the bank's management or its board. The term "unexpected" is appropriate in that while a number of experts and analysts expected there would be an adjustment in real estate values, no one expected the real estate values to drop by 40-60% in many cases, with record high unemployment numbers in different pockets throughout the country. This economic meltdown was not even seen by the Executive Office as reflected in some of the comments in President George Bush's book "Decision Points." In the book, the President stated that he *"was surprised by the sudden crisis."* His focus was on jobs and inflation. He *"assumed any major credit troubles would have been flagged by the regulators or rating agencies."* The financial institutions, however, had to react with little assistance from the federal government or regulatory relief. The Troubled Asset Repurchase Program ("TARP") would not work as originally conceived and had to be rebooted. While some community banks were able to participate, the program was primarily directed at the large financial institutions and even insurance companies such as The Hartford because of the need to prop up their viability.

How does this relate to *de novo* bank application? As previously stated, 70 banks failed in Florida. In addition, there were a large number of banks that were placed under voluntary or involuntary Cease and Desist Orders. We represented a number of banks in hearings contesting such Orders and were successful in negotiating a number of settlements or dismissals. The experience, however, was very adversarial, primarily with the Atlanta Regional Director at that time and/or the office's counsel , with the FDIC threatening harsh treatment of management and directors. Threatening letters from the Atlanta Regional Director were sent via overnight delivery to directors' residences. The Regional Director would call the President or Chairman on their cell phones to coerce them to enter into a voluntary Cease and Desist Order. When counsel for a bank was on the phone, the call would be cut short.

The Cease and Desist Orders were presented as being a road map tailored for a "troubled bank" to follow and be able to come out of being in troubled condition, mostly because of the increase in troubled assets and commercial real estate loans on the bank's books. Many of the provisions of the Cease and Desist Orders were nothing more than carbon copies of one another. In Florida and Georgia, Tier 1 Leverage Capital ratio was 8%, while the minimum Total Risk-Based capital ratio was 12% and 10%, respectively. There was no reason given for the difference in the Total Risk-Based Capital Ratios. The banks were given unrealistic timeframes to raise capital, during a time when fewer investors were interested in investing in stock of community banks. One would argue that the FDIC would not hold a bank accountable to those dates and ratios, but under oath, former FDIC Atlanta Regional Director Thomas Dujenski stated that he held directors personally liable if they voluntarily stipulated to the Cease and Desist Order.

The years between 2008 and 2013 were very difficult years for community banks. Many directors, management officials, and shareholders had their equity investments significantly diluted or erased. The prestige of being a director of a community bank is no longer prominent.

As a result of the number of bank failures and mergers, the latter of which generally find directors subject to two year non-competition agreements, the pool of qualifying directors that many states require has diminished. The same applies to the pool of qualified executive officers that are available to start a new bank. While an executive officer of a failed bank can become Chief Executive Officer, President, Chief Financial Officer, Chief Loan Officer, etc. of a non "troubled bank," they are excluded from being considered by the FDIC for a *de novo* bank. The amount of executive officer development training has diminished as well.

With the change in the corporate tax rate in 2018, and the reduction in the number of community banks due to mergers, we believe the interest in starting a community bank will start to increase. The attitude toward management and directors by state and federal regulatory agencies going forward will have a significant impact on the number of applications that we can expect over the near future. A good start in this regard was the speech given by Chairman Jelena

McWilliams in North Carolina at a Banking Institute event on March 21, 2019, explaining her philosophy on bank supervision. Hopefully this philosophy will spread throughout the FDIC.

Should you have any questions about these comments, please do not hesitate to contact me at george.igler@iglerlaw.com or (850) 878-2411.

Sincerely,

IGLER | PEARLMAN, P.A.

[redacted]

A. George Igler