

Charter Conversions

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Presentation by:

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PRACTICES

Financial Institutions Corporate
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Compliance & Litigation

Blockchain

Corporate

Capital Markets & Securities

Mergers & Acquisitions

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EDUCATION

JD, New York University School
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BA, Rice University

ADMISSIONS

Texas

New York

District of Columbia

Carl leverages his experience as a lawyer with the Office of the Comptroller of the Currency to resolve financial institutions' most complex regulatory and enforcement matters. He also counsels financial institutions on mergers and acquisitions and securities offerings. His close collaboration with seasoned bank examiners on the supervision of problem institutions assigned to the OCC's Special Supervision unit, as well as his role with multiple rulemakings under the Dodd-Frank Act, give him a unique, insider's perspective on bank regulatory compliance, supervision, enforcement and public policy. Coupled with his investigative and enforcement experience acquired representing financial institutions before the CFPB, OCC, FinCEN, Federal Reserve, the FDIC and others while serving in the Financial Institutions group of a Washington, DC law firm, and corporate experience in mergers and acquisition and securities offerings, Carl is uniquely qualified to advise financial institutions on virtually all aspects of their operations. Carl is a member of the *Banking Law Journal* Board of Editors and a recognized contributor to the latest edition of *The Law of Financial Institutions*, one of the leading banking law textbooks. He also authored Practical Law's Q&A summary of financial institution regulation in Texas, New York, New Jersey, and Virginia. His pro bono practice focuses on representing foreign nationals in US courts in cases brought under the Hague Convention on the Civil Aspects of International Child Abduction.

Relevant Experience

- Advised financial institutions on all aspects of Bank Secrecy Act compliance, including customer identification programs, suspicious transaction monitoring procedures, the travel rule, and foreign correspondent accounts.
- Represented financial institutions and their employees in enforcement negotiations and investigations before the CFPB, OCC, FinCEN, Federal Reserve, FDIC, FHFA, FTC, FINRA, DOJ, and the Senate Banking Committee.
- Drafted comment letters on regulatory rulemakings by the OCC, the FHFA, and the NCUA.
- Conducted consumer compliance reviews for banks, mortgage service companies, and other types of financial institutions.
- Represented banks in appeals of supervisory conclusions.
- Represented banks in M&A transactions and securities offerings.
- Represented a community bank in a charter conversion to a national bank.
- Represented organization groups in connection with de novo federal and state bank charter applications.

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- Corporate
- '34 Act Reporting and Related Matters

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•EDUCATION

- JD, Duke University School of Law, 2016
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•BAR ADMISSIONS

- North Carolina
- Texas

Nate's practice focuses on transactional, securities, and corporate governance matters involving banks, bank holding companies, and other financial institutions.

Nate advises financial institutions and their holding companies in a wide range of corporate and regulatory matters, including corporate governance matters, securities offerings, mergers and acquisitions, and general bank regulatory matters.

Nate also represents issuers and underwriters in initial public offerings, follow-on public offerings, shelf registration statements, and private placements. His practice includes regularly advising SEC reporting companies, as well as companies with securities quoted on the OTC Markets Group, regarding compliance with ongoing reporting and disclosure obligations under federal and state securities laws, securities exchange and OTC listing requirements, and other federal and state laws.

Nate has also been a speaker or presenter at numerous banking events, including events sponsored by the Texas Bankers Association and the Independent Community Bankers of America.

Relevant Experience

- Represents banks and bank holding companies in all matters related to mergers and acquisitions, mergers of equals, and branch establishments, sales and purchases.
- Advises public company clients on federal securities law matters, including compliance with periodic and ongoing and periodic disclosure obligations of SEC reporting companies.
- Advises public and private company clients on debt and equity offerings as well as federal and state securities law compliance.
- Advises boards of directors on corporate governance matters, including fiduciary duties, strategic planning designed to enhance or protect shareholder value, developing and implementing corporate responses to activist investors, and ongoing counsel related to corporate governance efficiencies.
- Represents banks through regulatory applications and capital raising matters for the establishment of de novo bank charters, bank charter conversions, and bank holding company formations.

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.
 - *Disliking your current regulator is not a good enough reason*
- 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 we are 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 preparing and submitting a draft application for preliminary input 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. Prospective regulators are now more heavily scrutinizing why banks are seeking to convert.

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)	Don't like your field examiners
Different asset concentration limits	
Had two or more unfair examinations	
Preemption (State to National)	

Why should we convert?

- Supervisory areas of focus can change over time for each regulator
- OCC priorities: toughest on BSA/AML; concentration limits; ACL adequacy relative to peer group; criticized and classified assets; fair lending; expects banks to “show your work”
- Federal Reserve priorities: second toughest on BSA/AML; risk management; fair lending; CRA; compliance (generally); M&A
- FDIC priorities: compliance (particularly fair lending, UDAAP, HMDA reporting); CRE concentration; noncore funding dependency

Stage I – Pre-filing (Planning)

- Senior management carefully weighs the pros and cons
- Engage counsel to assist (and counsel can draft a memo to help weigh pros and cons)
- 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)

- Goal of this step is to introduce yourself to new potential regulator and feel out one another
- Schedule pre-filing meeting with new regulator (in-person, if possible)
 - Give new regulator lengthy notice to schedule pre-filing meeting
- 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 from current directors and management team

Stage I – Pre-filing (Prepare Application)

- Preparing the applications the most tedious 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 (if not waived by prospective regulator)

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

- Conversion application supplemented with a number of other applications and/or revised 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)

- Stage I is the most active – Stage II is the least active
- Do not be discouraged if there is a lot of waiting – processing by new regulator could take months
- Respond to additional information requests from the regulators
- Regulators conduct interviews and examinations (potentially on-site)
 - How involved this process may be will depend, in part, on when your most recent exam was completed
- Potentially multiple 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

- 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 and do not need to be amended to reflect a name change (but you should still confirm)
- Consider whether you have contractual notice obligations to counterparties (unlikely)
- Organize copies of applications and approvals

Q&A Time

Questions? Contact us!

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