

National Bank Charters – Are they Worth the Money?

By John Reichert
and Jim Sheriff

In the past year, we have received a number of inquiries from national banks about the process and merits of converting to a Wisconsin state bank charter. Charter conversions are not a new phenomenon, and evaluating the appropriateness of your charter should be a part of your regular and ongoing strategic reviews. The balance of this article explores some of the reasons Boards of Directors and management have cited for deciding to convert from a national bank charter to a state bank charter, including:

1. Cost. Most national banks are paying significantly higher regulatory and examination fees than their state bank peers. It is estimated that a \$200 million national bank could save between \$50,000 and \$60,000 *annually* by converting to a Wisconsin state charter. The OCC's published schedule of fees for such a bank would suggest an assessment of \$38,319 semi-annually, or \$76,638 per year. Conversely, the state charges \$0.0475 per \$1,000 in assets (or about \$9,500) per year for a \$200 million bank. The state also charges hourly for examinations. A rough estimate of the typical examination fee would be \$31,500 with exams occurring once every three years, as the WDFI alternates exams with the FDIC and Federal Reserve. The FDIC and Federal Reserve do not charge for examinations. Accordingly, over a three year period, the \$200 million national bank would pay approximately \$230,000 in fees to the OCC while a comparably sized state bank would pay about \$60,000 (three annual fees and one exam).

It is true that the process of conversion comes with a price tag. In addition to a



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\$1,500 filing fee, the applicant will have to pay for a state examination and certain legal costs. Plus, there will be the costs associated with rebranding the bank to remove all references to “national” or “N.A.” in signage, paperwork, contracts, etc. Still, if all those costs total \$100,000, they are recaptured pretty quickly with the anticipated annual savings from regulatory fees and assessments. The question then becomes, is having a national bank charter worth the extra money to your institution? One of the perceived disadvantages sometimes cited in a charter conversion is that the bank will be examined by two agencies – the WDFI and the FDIC, in the case of a non-member bank, or the WDFI and the Federal Reserve in the case of a member bank – versus a single regulator in the OCC.

2. Dilution of National Bank Powers.

a. Preemption. Historically, national banks benefited from broad federal preemption of state laws, thus making it easier to conduct operations in numerous states, particularly consumer lending programs. This was essential for banks with nationwide credit card and consumer mortgage lending programs, allowing them to operate on a uniform platform and to preempt potentially 50 different state laws governing consumer disclosure and imposing restrictions on rates

and charges. Subsequent to the enactment of the Dodd-Frank Act, federal preemption continues to be cutback and watered down, and the OCC has become far less of a champion of broad preemption of state laws for national banks than it was before. Furthermore, many of the national banks in Wisconsin do not engage in extensive multi-state operations, thus making preemption a feature of the national bank charter they are paying for but not using. In addition, due to changes in federal laws, state-chartered banks may also broadly preempt state laws and restrictions, similar to the preemption rights of a national bank.

b. Legal Lending Limits. National banks and state banks have different legal lending limits. The OCC's legal lending rules provide for a limit equal to 15 percent of the total capital for a national bank, which can be increased to 25 percent if the “over amount” is secured by readily marketable collateral. Wisconsin-chartered banks may lend up to 20 percent of total capital.

c. Wisconsin's Parity and Universal Banking. Traditionally, the powers and “permissible activities” of national banks have been broader and more robust than those afforded to their state-bank counterparts. However, many states, including Wisconsin, have adopted so-called parity or “wildcard” statutes that allow state-chartered banks to engage in activities to the same extent a national bank would be authorized to do so. In addition, state banks in Wisconsin have more extensive equity investment authority than national banks and may elect to have a “universal bank” charter,

which provides for even broader permissible powers than those available under a national bank charter.

3. Regulatory Access and Relationships. One of the points cited by banks that have elected to convert has been the desire to have more continuity and local access to their primary regulators. Increasingly, there is significant turnover within the OCC, and things that used to be handled locally are now being run through regional offices or being controlled from Washington D.C. With a state charter, by definition all of the decision makers are local. The Commissioner of Banking and the Secretary of the Department of Financial Institutions are in Madison, a phone call and a day trip away for most Wisconsin bankers. That being said, increasingly state regulators are deferring to their federal counterparts at the FDIC and Federal Reserve, either out of necessity given a lack of adequate state resources, or in response to the growing reach of the federal supervisors. Nonetheless, the state and federal regulators generally work collaboratively, and there is some appeal in being able to visit the Commissioner and Secretary face-to-face on relatively short notice to discuss your bank, appeal a finding, or seek their guidance and assistance.

The OCC has long made it a tradition to rotate examination staff throughout different areas of the country, and often this constant change in examination staff can impact the examiners' ability to have a thorough understanding of the bank, its market and culture. This has led to a perception that the OCC has more of a “one size fits all” approach for banks than does the WDFI.

(continued on p. 13)

*Midwest Bankers Insurance Services (MBIS):***Wire Transfer Fraud Scams on the Rise – Are You Covered?***By Jeff Otteson*

One of the largest areas of loss for banks across the upper Midwest continues to be fraudulent wire transfers that are customer initiated via phone, fax or email. Unfortunately, some of these claims are not covered due to the bank not following specific requirements in the Financial Institution Bond (FI Bond) policy.

How does your bank avoid this exposure? It all starts with having strong internal policies and procedures including a thorough review of the FI Bond wire transfer requirements. Your FI Bond will only provide coverage if you follow the requirements outlined in your FI Bond Policy, which typically include the following:

1. A wire transfer agreement in place for all customers that initiate wire transfers via a phone call, email or fax.
2. A predetermined PIN or password. Usually the best practice is to have this PIN or password on the wire transfer agreement. Also,

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It's important to spend some time with your FI Bond agent to make sure you understand your carrier's requirements and to make sure your limits are adequate.

the PIN or password should not be easily identifiable.

3. A call back procedure in place to verify the customer using the predetermined PIN or password. When calling the customer back to verify the funds transfer and authenticate the transaction, the call back needs to be made to the person and phone number on the wire transfer agreement. The call back procedure authentication needs to be documented on a ledger form and initialed or signed verifying that the passcode was authenticated by the bank employee completing

the wire request. Some carriers even require a voice recording of the call back procedure. Most policies have requirements to call back the customer on all requests over a specified dollar amount but many banks will call back on all wire transfer requests initiated via phone, fax or email.

A common paid claim scenario is for a fraudster to compromise the bank customer's phone system and password or PIN resulting in fraud, despite the bank staff following all required procedures. However, we have seen claims denied because there was no written wire transfer agreement on file for the customer, or the call back was made to the fraudster's number rather than the number on the wire transfer agreement.

It's important to spend some time with your FI Bond agent to make sure you understand your carrier's requirements and to make sure your limits are adequate.

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Bank Charters*(continued from p. 12)*

This article is not intended to serve as an endorsement of conversion to a state charter. Rather, we seek to raise discussion points for you and your Board. The process of converting is time-consuming and there are advantages and disadvantages to each charter. If you are a national bank headquartered in Wisconsin, as part of your regular strategic planning you should evaluate whether your charter is the one best suited to your current business model, as well as your goals and objectives.

While Wisconsin Statutes Section 221.0218 sets forth the authority for converting from a national bank to a state bank, and WDFI has a handout summarizing the required steps, anyone considering converting should confer with counsel and arrange for a pre-filing meeting with WDFI to identify any potential issues and discuss whether a conversion is appropriate.

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