Birthing Baby Banks; the Dearth of De Novos

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In another new and welcome gesture, the Federal Deposit Insurance Corporation (FDIC) has provided further encouragement for formation of de novo charters as described in the FDIC's Summer 2016 "*Supervisory Insights Journal*." This additional de novo encouragement by the FDIC follows on its April 2016, reduction of the "special" supervisory oversight timeframes for de novos from seven years to three years in most instances.

Clearly the FDIC is attempting to address the dearth of de novo applications it has received since the beginning of the great recession, and is to be commended for continuing that effort.

Beyond the FDIC process for de novo applications, however, lies a deeper and more difficult question of whether a de novo institution will attract investor interest in light of the overall economy and the current "regulatory burden," whether real or perceived.

General rate structures and economic considerations aside, query whether a new bank or thrift will attract needed investor dollars until such time as a system that truly recognizes the vast differences between simple community banks and large multinational institutions can be effectively and formally developed and implemented. The type of investor that may be attracted to provide capital in a lesser-regulated industry is going to look askance at what has happened to the banking industry over the past few years, and the daily news stories of multi-billion dollar fines assessed by agencies against institutions for operating mistakes or for subjective determinations of UDAAP violations.

As smaller community banks are forced to combine in order to address the economic and regulatory burdens that are both present and on the horizon, competition will be reduced. And, without the influx of new institutions, consumers and business customers will be left with fewer choices.

Of course de novo institutions will be more vulnerable generally to adverse economic situations such as those encountered in the post-2008 environment. How the agencies react to those challenges in terms of pressure on de novo institutions can be adjusted to take into account the age of the institution and its risk to the "system" in viewing potential "fixes." Agencies have considerable opportunities for subjective judgment in addressing problems in any type of charter, and could perhaps provide some additional buffer for de novo institutions in order to help them get on their feet without substantial risk.

Part of the attraction for de novos will in fact need to be recognition of size-and-risk-appropriate regulation in order to help de novos form, grow and prosper. When that happens, everyone gains.

The community and competitive benefits attendant to de novo formation are obvious. What is missing remains a strong approach to real differentiation in overall regulation based on risk profile and deposit size. It is good to see the FDIC continuing to take steps to help encourage formation of de novo institutions, and now perhaps Congress and each of the agencies can try to enact meaningful regulatory reform to reduce the regulatory burden appropriately in the overall operating context.