

APPENDX K

De Novo Bank Procedures

A list of applicable statutes relative to forming a new bank under New Mexico State charter are enclosed for convenient reference. Much of the data called for within the statutes is also requested by the Federal Deposit Insurance Corporation in its "APPLICATION FOR A COMMERCIAL CHARTER AND FEDERAL DEPOSIT INSURANCE".

Section 58-1-55 NMSA 1978 mandates a minimum capital structure of \$500,000. The Director of the Financial Institutions Division (Director) may deem this as inadequate in relation to a prospective market area. Be aware that the FDIC has a guideline minimum of \$4,000,000. Below this requires special FDIC approval.

The Financial Institutions Division (Division) does not offer legal counsel to facilitate an applicant's process. An applicant is encouraged to secure the services of a competent professional. Division staff are available to respond to inquiries regarding form and interpretation of these statutes. The application process is reiterated here, in condensed narrative form, to provide a capsulated perspective of sequential steps to be followed.

Step 1 There must be five or more individual incorporators, or a holding company. Three-fourths of the directors shall be citizens of the United States; two-thirds shall be residents of the State of New Mexico. Incorporators must subscribe to a minimum required amount of stock.

Step 2 File a Notice of Intent to organize a state bank with the Director, pursuant to Section 58-1-56 NMSA 1978. The notice of intent should include a Strategic Business Plan developed for the bank, in addition to the specific requirements in 58-1-56; and be accompanied by check for statutory fee of one-half of one percent of the proposed capital structure, not to exceed \$7,500.00. The notice must include:

- (1) The name, residence and occupation of each organizer, and the amount of stock to be subscribed and to be paid for by each
- (2) The name and address of an individual within the state who shall act as agent
- (3) The total proposed capital structure, the number of shares, par value and proposed price per share
- (4) Whether it is intended for the proposed bank to have trust services
- (5) The community in which the proposed bank is to be located
- (6) Feasibility study estimating need for and benefits of proposed bank

(7) A Strategic Business Plan including a 5-year projection by month for assets/liabilities, income/expense showing the 8% minimum Tier 1 capital ratio.

(8) Prospectus describing stock offering _____

(9) Copy of escrow agreement naming the agent bank

(10) Financial report for each organizer

Step 3 At this point, the notice of intent and/or any accompanying documents must be reviewed by the Director. If any defects are noted, the Division must notify the organizers within 20 days of receipt.

Upon approval by the Division of the Notice of Intent, the organizers shall submit the names, addresses and the amount of stock each proposed subscriber intends to purchase, and:

(1) Issue an interim receipt to each subscriber and file a duplicate copy with the Director

(2) File with the escrow agent and Director a copy of all subscription agreements

(3) Each subscriber shall pay, in addition to cash subscription, such percentage of the selling price of the stock as the Director deems reasonable, into a fund to be used to defray organizational expenses. No organizational expenses shall be paid out of any other funds of the bank.

Step 4 After the capital structure has been fully subscribed, the organizers may apply to the Division for permission to file with the Public regulation Commission. The organizers shall submit:

(1) Signed proposed articles of incorporation, in quadruplicate, on 8 1/2" X 11" paper and containing, at a minimum, (a) through (g) under 58-1-57 A. (1).

(2) Copy of proposed bylaws.

Step 5 The application for permission to file corporate papers is reviewed by the Director. If any defects are noted, the Division must notify the organizers within 20 days of receipt. (Section 58-1-57C)

Please Note:

IF NO APPLICATION FOR PERMISSION TO FILE CORPORATE PAPERS IS FILED WITHIN ONE HUNDRED AND EIGHTY DAYS FOLLOWING THE FILING OF NOTICE OF INTENTION, THE ENTIRE APPLICATION IS CANCELED; UNLESS AN EXTENSION IS REQUESTED AND ADDITIONAL FEE OF \$2,500 SUBMITTED.

Step 6 Upon receipt of a complete application, including acceptable articles of incorporation, the Division will complete its investigation of the application within sixty days and the Director will approve or reject the application. If approved, the incorporators shall call for payment of subscriptions in full, within thirty days. On or before the expiration of 30 days, the incorporators shall deliver a statement to the Director, signed by the escrow bank, certifying the amount paid in. The proposed bank president and cashier or secretary then certify to the Division that the entire authorized capital structure has been paid in, and that the bank will be prepared to transact banking business within one year.

Step 7 The incorporators will call a stockholders meeting to elect directors, adopt bylaws, and to call the first director's meeting to elect officers.

Step 8 Upon request to the Director, a certificate of authority will be forthcoming. The request shall contain the following information:

- (1) The address at which the bank will operate
- (2) A statement that bylaws have been adopted
- (3) A statement that the full amount of authorized capital has been paid to the escrow bank
- (4) Signed oaths of directors

Step 9 The Director shall issue a certificate or deny the request within 20 days of receipt. If denied, applicant may employ court review, Section 58-1-45. The bank may not conduct banking business until insured by the FDIC.

List of De Novo Statutes

NMSA 1978 58-1-52 Incorporators 58-1-53 Corporate Powers 58-1-55 Capital Structure 58-1-56 Notice of Intention 58-1-57 File Corporate Papers 58-1-58 Determination 58-1-45 Court Review 58-1-59 Subscription Calls 58-1-60 Stockholders Meeting 58-1-61 Certificate of Authority 58-5-1 Oath of Director 58-5-8 Federal Reserve member _____